NORTH CENTRAL REGIONAL TRANSIT DISTRICT
BOARD MEETING AGENDA

September 7, 2012
9:00 AM- 1:00 PM
Jim West Regional Transit Center
Board Room

CALL TO ORDER:

1. PLEDGE OF ALLEGIANCE
2. MOMENT OF SILENCE
3. ROLL CALL
4. INTRODUCTIONS
5. APPROVAL OF AGENDA
6. APPROVAL OF MINUTES – *August 3, 2012*
7. PUBLIC COMMENTS

PRESENTATION ITEMS: None

ACTION ITEMS FOR APPROVAL/ DISCUSSION:

A. **Review and Adoption by Resolution No. 2012-20 creating an Ex-officio Non-voting Board Seat on the Board of Directors of the NCRTD for the Rio Metro Regional Transit District.** *Sponsor:* Anthony J. Mortillaro, Executive Director. *Attachment*

B. **Review and Adoption by Resolution No. 2012-12, Adding the Town of Edgewood as a New Member of the NCRTD.**
Sponsor: Anthony J. Mortillaro, NCRTD Executive Director. *Attachment*

C. **Review of Resolution 2011-15 providing for the continuation of Resolution 2010-09 to eliminate fares for all fixed routes and paratransit up to three fourths of a mile from fixed routes operated by the North Central Regional Transit District.**
Sponsor: Anthony J. Mortillaro, NCRTD Executive Director and Linda Trujillo, Service Development and Projects Manager. *Attachment*

D. **Review and Adoption by Resolution No. 2012-21, Repealing NCRTD Board Resolution No. 2007-13 in its Entirety and Adopting New Procurement Regulations.**
Sponsor: Anthony J. Mortillaro, NCRTD Executive Director. *Attachment*

E. **Review and Acceptance of Goals and Objectives for Executive Director for the period of June, 2012 – June, 2013.** *Sponsor:* Daniel Barrone, Chairman. *Attachment.*

F. **Review and Adoption of Resolution No. 2012-22, A Resolution Adopting an Infrastructure Capital Improvement Plan (ICIP).** *Sponsor:* Anthony J. Mortillaro, NCRTD Executive Director and Linda Trujillo, Service Development and Projects Manager. *Attachment*

DISCUSSION ITEMS:

G. **Financial Report for August 2012:**
Sponsor: Anthony J. Mortillaro, NCRTD Executive Director and Brian Mirabal, Finance Manager. *Attachment*

H. **Finance Subcommittee Report:** *NA*
Sponsor: Chair Tim Vigil and Anthony J. Mortillaro, NCRTD Executive Director. *No attachment from August 31, 2012, meeting.*

I. **Tribal Subcommittee Report:** *Sponsor:* Chairwoman Marylou Valero. *No attachment.*

J. **Executive Report for August 2012 and Comments from the Executive Director:**
Sponsor: Anthony J. Mortillaro, NCRTD Executive Director. *Attachments*

- Federal Transit Administration Financial Management Oversight Review Final Report. *Attachment.*
- Annual Attendance Report. *Attachment.*
- Request for Legislative Changes to Regional Transit District GRT Distribution Process. *No attachment.*

K. **CLOSED SESSION:**

Closed session of the meeting pursuant to NMSA 1978, Section 10-15-1 (H) (2) "limited personnel matters" for the purposes of performance evaluation of the Executive Director.

Closed session of the meeting pursuant to NMSA 1978, Section 10-15-1 (H) (5) regarding "collective bargaining" for the discussion of bargaining strategy preliminary to collective bargaining negotiations.

L. **Reconvene in Open Session:** Possible action item from closed session.

MATTERS FROM THE CHAIR

MATTERS FROM THE BOARD

MISCELLANEOUS

ADJOURN

NEXT BOARD MEETING: October 5, 2012 at 9:00 a.m.

If you are an individual with a disability who is in need of a reader, amplifier, qualified Sign Language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing of the meeting, please contact the NCRTD Executive Assistant at 505-438-3257 at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

North Central Regional Transit District
Board Meeting
Friday, August 3, 2012

CALL TO ORDER:

A regular meeting of the North Central Regional Transit District Board was called to order on the above date by Commissioner Barney Trujillo, Vice Chair, at 9:19 a.m. at the Jim West Transit Center, 1327 Riverside Drive, Española, New Mexico.

1. **Pledge of Allegiance**

2. **Moment of Silence**

3. **Roll Call**

Roll call indicated the presence of a quorum as follows:

Members Present:	**Elected Members**	**Alternate Designees**
Los Alamos County	*Councilor Geoff Rodgers*	*Philo Shelton*
Rio Arriba County	*Commissioner Barney Trujillo*	
Taos County		
Santa Fé County	*Commissioner Kathy Holian*	
Pojoaque Pueblo	*Mr. Tim Vigil*	
Ohkay Owingeh		
San Ildefonso Pueblo		
Santa Clara Pueblo		*Ms. Mary Lou Valério*
Tesuque Pueblo	*Gov. Charles Dorame*	

City of Santa Fé		*Mr. Jon Bulthuis*
City of Española	*Mayor Pro Tem Dennis Tim Salazar*	

Staff Members Present
Mr. Anthony J. Mortillaro, Executive Director
Ms. Barbara Mascareñas, Executive Assistant
Mr. Mike Kelly, Transit Operations Manager
Ms. Linda Trujillo, Service Development and Projects Manager
Mr. Pat López, Financial Analyst
Mr. Jim Nagle, Public Information Officer

Others Present
Mr. Peter Dwyer, Legal Counsel
Mr. David Harris, New Mexico Department of Transportation
Mr. Carl Boaz, Stenographer

4. INTRODUCTIONS

Councilor Rodgers introduced PhiloShelton as the alternate representative from Los Alamos County.

Mr. Mortillaro introduced Barbara Mascareñas as the new Executive Assistant.

5. APPROVAL OF AGENDA

Commissioner Holian moved to approve the agenda as presented. Gov. Dorame seconded the motion and it passed by unanimous voice vote.

6. APPROVAL OF MINUTES

- **Minutes of Regular Meeting on June 1, 2012**

Commissioner Holian moved to approve the minutes of June 1, 2012 as presented. Mr. Bulthuis seconded the motion and it passed by unanimous voice vote.

- **Minutes of Regular Meeting on July 6, 2012**

Commissioner Holian moved to approve the minutes of July 6 2012 as presented. Councilor Rodgers seconded the motion and it passed by unanimous voice vote.

7. PUBLIC COMMENTS

There were no comments from the public.

PRESENTATIONS

There were no presentations.

ACTION ITEMS FOR APPROVAL/DISCUSSION:

A. Approval of Resolution NO. 2012-15. Relating to Collective Bargaining for the NCRTD Providing Rights, Responsibilities and Procedures in the Employment Relationship Between Employees and the Employer

Mr. Mortillaro explained this action item relates to the establishment of what is called a labor/management board. The Public Employees Act allows entities to establish their own labor relations board in order to have a board that is more sensitive to local issues rather than statewide. This resolution mimics the rules and regulations the Public Employees Labor Relations Board (PELRB) has. The NCRTD board would be composed of 3 individuals - one representing labor, one representing management and one appointed by those two representatives. An individual would serve a one-year term and during membership are not allowed to hold any political office or be an employee.

The resolution provides for their duties and when they would meet. If approved, it still has to be submitted to PELRB for ratification.

Mr. Dwyer said as counsel for Northern New Mexico Community College he spoke at a labor relations board conference. Out of a lawsuit this method of appointing the board was developed. They can ask for reappointments if there is a problem. The District doesn't have to have a local board but most people he worked with saw benefit in having a local board. The PELRB meets in Albuquerque so he would have to drive down there if the District needed to meet with them.

Councilor Rodgers asked if it included binding arbitration.

Mr. Dwyer said not really. They would handle complaints and Mr. Mortillaro is working on negotiation with the union and probably will get a collective bargaining agreement. If a competing union was coming in that attempt would go to this board. There was no collective bargaining agreement yet. The union seems good to work with so far so he didn't anticipate problems.

Mr. Mortillaro added that the context talked about impasse procedures so if we reach impasse we will ask for mediation and this provides for an arbitrator on unsolved issues. However, when the decision is related to financial issues it is not implemented unless this board approves funding for it.

Councilor Rodgers asked then if any third party who made decisions had to come back to this board.

Mr. Dwyer said the local board should be resolving financial issues and an appeal would go to the court but financials remain here.

Commissioner Holian moved to approve the resolution as presented. Councilor Rodgers seconded the motion and it passed on a roll call vote with Los Alamos County, Rio Arriba County, Santa Fé County, Pojoaque Pueblo, Santa Clara Pueblo, City of Santa Fé, and City of Española voting in favor, none against and Tesuque Pueblo abstaining.

B. Review and Adoption by Resolution No. 2012-17, Amending the Records and Email Retention Policy

Mr. Mortillaro invited Mr. Nagel, to present this resolution.

Mr. Nagel said this resolution would amend the policy adopted November 4, 2011. The FTA in overview requested specific language on accounting records. This amendment added that language on page 40 for a minimum 3 years. It also added language for above-ground storage tanks on page 44 for tanks on NCRTD property for 7 years.

There were also some deletions, the first on page 36; abbreviations and acronyms that were not referred to in the document and on page 55 and an addition pertaining to retention of emails as it pertains to tribal sovereignty rights.

Commissioner Holian moved to approve the resolution as presented. Mayor Pro Tem Salazar seconded the motion and it passed on a roll call vote with Rio Arriba County, Santa Fé County, Pojoaque Pueblo, Santa Clara Pueblo, Tesuque Pueblo, City of Santa Fé, and City of Española voting in favor and none against. Los Alamos County was not present for the vote.

C. Review and Adoption by Resolution No. 2012-16, Amending the Personnel Rules and Regulations

Mr. Mortillaro explained that the policies of 2007 hadn't been amended for quite a while and there were changes in state and federal laws since then. Through experience with prior regulations and some lack of clarity it became apparent the proposed changes would enhance the policy.

The District used an employee advisory committee for input and three of them came from driver ranks as selected by drivers and the same for administrative staff. There was no management staff on the committee. They met with Mr. Mortillaro on June 4 and June 19 and he recommended the proposed changes as did the Finance subcommittee.

The Finance Subcommittee dealt with the excessive use of sick leave and narrowed sick leave incentives to two - transfer and buy back.

The Finance Committee authorized Mr. Mortillaro to submit them to the employees and they chose the sick leave transfer program and that was included in the proposed changes.

He referred board members to the red line version to see all the changes that were made in the proposed policies.

Chair Trujillo asked if the change meant Mr. Mortillaro could hire at-will employees without board approval beforehand.

Mr. Dwyer said the section just established what was a management right. Later on there were details how it would happen.

Mr. Mortillaro clarified that the Board could amend these but because of the collective bargaining process, some policies out of this manual as applied to collective bargaining would still be negotiated. To the extent feasible the District would ask the union to keep within these policies as much as possible but they might have to tweak them.

On page 67 had customer standards for employee appearance to present a positive image of employees to those we serve. In item G provided for notifications on changes in status, location, etc. within 15 days and that allows the District 15 days to notify our carrier.

Page 69 dealt with running or holding public office and reflected recent court cases. The Hatch Act applies. Mr. Dwyer included the web site because of the complexities. An analysis was needed anytime an employee wanted to run for office.

Page 70 defined anniversary date and how promotions affected anniversary.

Page 71 dealt with promotional increases to clarify how they would occur and that they had to be in line with the compensation plan. Promotion opportunity was advertised in-house first.

Page 72 dealt with issues on temporary promotions that with or without a STEP plan, an employee promoted into higher position would make at least the minimum and if above that, a 5% bump up would happen.

Page 84 clarified overtime compensation. The District follows the Fair Labor Standard Act. The qualifications were under B. It also clarified when travel was considered as work.

Page 86 defined holiday pay and clarified that people on a 10 hour shift only get 8 hours of holiday pay on a holiday.

Page 88 specified the holidays observed. The employee advisory committee requested exchanging Martin Luther King Day for Presidents' Day in February. Some time ago the District observed Presidents' Day and exchanged that for the day after Thanksgiving. Item D clarified eligibility for holiday pay that the employee had to be on the job before or after the holiday.

Page 89 clarified annual leave and restructured the annual leave in a table. The table makes it clear that at the commencement of 4th year of service was when the accrual rate increased. Employees could accrue up to two times the annual accrual amount and the modification kept that for current employees and any after the approval of this policy, the maximum accrual would be limited to 240 hours. So it wouldn't take anything away from those on board now. Accrual rates have no change.

Page 91 defined the family medical leave act.

Page 92 dealt with sick leave. The maximum accrual had not changed. What did change was clarification on taking sick leave and when the District could request medicalverification and clarified what might be misuse of sick leave. At termination, no sick leave was paid. The policy incentivized employees to only use sick leave when necessary and that should produce fewer absences and more productivity with a sick leave transfer program. It required an employee to have accrued 80 hours of sick leave to participate. Once met, anything over and above that could be transferred to vacation leave up to 80 hours annually. Vacation had no "use it or lose it." So staff could do it once a year up to 80 hours of sick leave. It also required them to maintain those 80 hours because short term disability coverage didn't kick in for two weeks. The determination was made during the first pay period in December.

Mr. Bulthuis asked why the threshold of 80 hours was put in.

Mr. Mortillaro said it was in order to insure if the employee participates that they don't reduce below what they would need for the short-term disability waiting period. That program pays only 60% of salary up to six months.

Ms. Valério asked if the written medical statement. Requirement was after a certain number of days or on the first day.

Mr. Dwyer said the reasoning was when an employee repeatedly used a day to make long weekends so in those incidences management could ask for the documentation. It was at a supervisor's discretion if a pattern was seen.

Page 98 defined inclement weather leave policy.

Page 99 changed the RIF policy to not be on a seniority basis. The collective bargaining union wouldn't adopt this one. This was based on skill sets and the contribution to the agency. It required a board review and approval beforehand.

Page 109 dealt with violations of district polices and added more clarity on what could be resolved with suspension or other actions.

Page 110 said calendar days had included weekends and it was better to limit it to work days.

Page 115 clarified work hours, lunch periods and employee status.

Page 122 started the definitions section

In response to a question, Mr. Dwyer read the policy on sick leave that incorporated the Family Medical Leave Act.

Mr. Bulthuis referred to page 66 under drug and alcohol in the workplace in paragraph 3 regarding help for employees who self-refer and asked if it might imply to employees some immunity from testing or automatically be removed as a driver and whether including this clause would put the District on the hook if management knew about the problem.

Mr. Mortillaro said the EAP never had been established. The District has insurance that had such programs but questioned keeping a self-reporter driving.

Mr. Kelly said they were under the FTA regulations and USDOT regulations so any reasonable suspicion or self-admission would mean a referral to a program. Obviously they would not drive until completing that program successfully.

Mr. Mortillaro added that the District had a zero tolerance policy and self-reporting gives the employee time to fulfill a program without losing their job but were not behind the wheel until we were assured they were not using drugs or alcohol.

Mr. Dwyer assumed they would put those employees on some kind of leave until cleared.

Mr. Mortillaro agreed. The FTA drug testing standards and procedures were not here but would be followed by board adopted resolution.

Ms. Valério didn't see any language here in the event a driver got a DWI while off duty.

Mr. Mortillaro said that was in the procedures document.

Mr. Kelly said they would treat that as reasonable suspicion and their license might be in jeopardy. The District could not allow them to drive until they got that situation taken care of.

Mayor Pro Tem Salazar asked if drug and alcohol testing was done at employment or randomly.

Mr. Mortillaro said all of the above. It was pre-employment, random, reasonable suspicion and after an incident.

Mr. Vigil asked if it should include "per FTA."

Mr. Dwyer said it was separated it because the FTA makes changes periodically and that way the whole personnel document didn't need to be amended. So he didn't think it should be referenced here.

Mr. Mortillaro noted on page 66, item A 1.9 referred to USDOT substance abuse procedures and wondered if it was sufficient as mentioned up front or if it needed to be mentioned back here.

Mr. Dwyer noted it was capitalized on page 104 so it should become a defined term. He stated the definition and said it would be attached on page 116.

Mr. Mortillaro thought that could be included in the motion.

Commissioner Holian thanked staff and advisory committee for their revisions. Clearly it was a lot of hard work and improved the policies greatly.

Commissioner Holian moved to approve the resolution with the amendment that defined the term USDOT Substance Abuse Procedures. Mr. Vigil seconded the motion and it passed by unanimous roll call vote with Los Alamos County, Rio Arriba County, Santa Fé County, Pojoaque Pueblo, Santa Clara Pueblo, Tesuque Pueblo, City of Santa Fé and City of Española voting in favor and none voting against.

D. Review and Adoption by Resolution No. 2012-14, Adopting the FY 13 Compensation Plan

Mr. Mortillaro said annual approval of the Compensation Plan was required. The current plan is presented when the Board deliberates on the budget. It was a 3% increase in the budget as approved in June and this compensation plan provides for that decision and includes it in the compensation plan. This plan only covers non-represented employees and the collective bargaining agreement regarding union employeeswould be brought back for the Board's approval later.

These are productivity increases and the District had not provided COLA but only increases based on performance. Employees are reviewed on their anniversary date and, if eligible, are approved at that point in time.

The plan didn't discern between meeting and exceeding performance goals so it didn't recognize those who went beyond the goal. That was probably the down side but at this point he was not bringing anything to change that.

The Finance Committee recommended 3% based on performance only for non-represented employees and recommended getting away from the STEP pay plan. It was initially based on 3% pay steps and last year the Board changed them to 1.5% steps and it threw some people off the steps.

It was a lot cleaner with more flexibility to go to a minimum-maximum pay range. In the future, as an example if the Board should decide on 2.1%, for instance, it would be applied at that level.

The other thing they recommended was a third party to do a market pay analysis. No surveys have been done since 2007. It was not uncommon to do one every year or every other year. Five years was too far back. So it needed to be done this year and bring a report back to the Board

Mr. Vigil, Finance Subcommittee Chair agreed with Mr. Mortillaro's presentation. He thanked those who participated in that work.

Mr. Bulthuis asked what was in the works for the remainder (represented staff).

Mr. Mortillaro said that would be covered by the collective bargaining agreement. Discussion with the union would take place next week and the Board would have a closed session in September to cover those discussions and work through final parameters.

Ms. Valério asked if this would be straight across to all employees.

Mr. Mortillaro said no; it was based on performance and the only time employees were eligible was at their anniversary date.

Councilor Rodgers moved to approve the resolution as presented. Mayor Pro Tem Salazar seconded the motion and it passed by unanimous roll call vote with Los Alamos County, Rio Arriba County, Santa Fé County, Pojoaque Pueblo, Santa Clara Pueblo, Tesuque Pueblo, City of Santa Fé and City of Española voting in favor and none voting against.

Mr. Mortillaro said the other recommendations would eliminate the step plan and authorize the market pay survey.

Councilor Rodgers moved to eliminate the existing step plan and further to authorize the Executive Director to undertake a survey and positions and that a private sector component should be included in that survey. Mr. Vigil seconded the motion and it passed by unanimous roll call vote with Los Alamos County, Rio Arriba County, Santa Fé County, Pojoaque Pueblo, Santa Clara Pueblo, Tesuque Pueblo, City of Santa Fé and City of Española voting in favor and none voting against.

E. Review and Adoption by Resolution No. 2012-18, A Revised Charter Service Policy

Mr. Kelly said the existing charter service policy allowed the District to engage in charter services and that we knew when we moved into the Jim West Center that we would have vehicles not purchased with federal money parked here and that creates a conflict by storing and maintaining those vehicles purchased with federal funds and the District could not put that in jeopardy. So the District could only provide services for federal groups, 501c3 or elderly individuals to protect funding. Those activities were few and far between so probably less than $5,000 would be realized in costs per year.

Councilor Rodgers asked how often groups had used the RTD for charter service

Mr. Kelly said the Board adopted this policy at the August 2011 meeting and three charters had happened since then. They were outside of peak hours or on weekends and holidays. There was not much demand for that. Most requests were during peak hours so the District had to deny a lot of them.

Councilor Rodgers asked if the District still had vehicles purchased with GRT monies.

Mr. Kelly said they had six such vehicles.

Commissioner Holian moved to approve Resolution 2012-18 as presented. Mr. Vigil seconded the motion and it passed by unanimous roll call vote with Los Alamos County, Rio Arriba County, Santa Fé County, Pojoaque Pueblo, Santa Clara Pueblo, Tesuque Pueblo and City of Santa Fé voting in favor and none voting against. The City of Española was not present for the vote.

F. Review and Adoption by Resolution No. 2012-19, Adopting the FY 13 Regional Service Plans from the City of Santa Fé and Los Alamos County and acknowledging the Service Plan from Santa Fé County

Mr. Mortillaro said annually the District has provided allocations of GRT for regional services. Two member entities provide regional routes - Santa Fé Trails and Los Alamos County. In the past the District had to devise a methodology for that allocation and last year in FY 12 prior to adoption, the Board reviewed a number of methodologies for allocation and it was carried forward into FY 13 which the Board also adopted. So now that the Board knows how much was allocated to each entity, finance policies require that any entity receiving GRT also submit their regional service route plans and they were included in the packet. The allocation to those entities was; $1,402,760 to Los Alamos County and $981,932 to Santa Fé City. Both entities adopted separate transit plans.

The Santa Fe County transit plan provided for an additional route between Santa Fé and Golden but it was not budgeted for in FY 2013. If there had been extra funds available, the Board would have looked not only at Santa Fé County's request but the recommended additional routes district wide per the District's adopted service plan.

This resolution adopts the service plans of both regional plans and acknowledges Santa Fe County's service plan. The next agenda item would be consideration of additional routes.

Commissioner Holian said she would recuse herself if there was a motion for approval.

Councilor Rodgers moved to adopt the resolution 2012-19 as presented. Mr. Bulthuis seconded the motion and it passed by unanimous roll call vote with Los Alamos County, Rio Arriba County, Pojoaque Pueblo, Santa Clara Pueblo, Tesuque Pueblo, City of Santa Fé and City of Española voting in favor and none voting against. Santa Fé County was recused and did not vote.

G. Presentation of Annual Route Assessment Summary and Board Direction on Route Additions or Adjustments

Ms. Trujillo reported that she rode all the routes this year. Several items were minimal but she identified four major points.

1 –Extending the Pojoaque route to Nambé Falls Travel Center would result in an increase of $2,379.00 in expenses for fuel cost only.

2 - Low ridership to Las Trampas was a concern. At Las Trampas it connects with the Peñasco route and the route cost $146,668.57 to operate. Ridership did not even average 200 per month. There were 3-4 riders daily.

3 - Chama now runs only on Tuesday and Thursday to Tierra Amarilla and the customers had asked for a Wednesday route which would cost an additional $53,353.86.

4 - Golden route costs $115, 920, and providefor 4 trips per day. She had no projected ridership.

Her analysis of routes was included in the packet.

Mr. Mortillaro said the District did seek added funds through JARC funding and were awarded $50,000. That requires a 50/50 match so we have to contribute $50,000 of GRT money. They wanted to supplant JARC on another route so there was $50,000 GRT available to match the JARC allocationand just shy of one of these options and couldn't cover all of the recommendations.

Page 175 showed the analysis of each one.

If the Las Trampas route was eliminated, staff should have a public meeting up there and bring back a report on it.

Councilor Rodgers asked Ms. Trujillo if she had a clear understanding of the Las Trampas use and whether a lower level of service could be provided.

Ms. Trujillo said that could be considered. It was multi-purpose. A couple of customers ride to work and a couple for medical reasons and a couple to get to Española for personal business.

Commissioner Holian asked if JARC funding could be used for the Chama route. Ms. Trujillo agreed - JARC was for poverty level and the residents do qualify for that.

Commissioner Holian asked Ms. Trujillo for her recommendation.

Ms. Trujillo supported the Chama increase but there were many others to consider.

Ms. Trujillo clarified that she started at the end of April to ride all routes except she didn't ride Edgewood but Mr. Kelly did. She commented briefly on her analysis. She looked at where the costs were headed. The cost for Las Trampas in 2010 was $171 per rider; in 2011 it was $69 and in 2012 it had gone back up to $80 per trip.

Commissioner Holian moved to expand Pojoaque to Nambé Falls and give notice to Las Trampas of possible discontinuance and if discontinuation was recommended that the Golden Route and other proposed commuter routes be evaluated and add an additional day to the Chama route. Ms. Valério seconded the motion and it passed by unanimous roll call vote with Los Alamos County, Rio Arriba County, Santa Fé County, Pojoaque Pueblo, Santa Clara Pueblo, Tesuque

Pueblo, City of Santa Fé and City of Española voting in favor and none voting against.

H. Approval of Resolution No. 2012-20, Approving the 4th Quarter Financial Report for FY 12

Mr. López explained that, by law, the Local Government Division was responsible for oversight. They monitor District budgets and any transfers and make sure the District had no budget overruns and ensured stability or detected problems. They also oversee cash flow analyses. The District could not use cash reserves for recurring expenditures but could for a one-time expense. The Local Government Division also guides the District through the year and submitted the final budget to them by July 31st and quarterly reports to them on finances, budget status and a cash report. They were now requiring the quarterly reports be approved by resolution of the Board for the first time.

Mr. López reviewed the quarterly report with the Board. The budgeted amount for completing the building and furniture and fixtures was carried over. Some GRT came in low so the District kept vacancies longer. He made some comments on the cash report.

Councilor Rodgers asked where the reserve funds were shown.

Mr. López said it was part of that cash balance. About $3.5 million was for cash reserves and $1.5 million for operating reserves. So for big payments the District had the cash flow to do that.

Councilor Rodgers asked if they had the necessary funds in the reserve account.

Mr. López agreed. They had to have one month's reserve for DFA but internally kept 25% and now exceeded that too.

Councilor Rodgers moved to approve Resolution 2012-20, 4th Quarter Financial Report for FY 12 as presented. Mr. Bulthuis seconded the motion and it passed by unanimous roll call vote with Los Alamos County, Rio Arriba County, Santa Fé County, Pojoaque Pueblo, Santa Clara Pueblo, Tesuque Pueblo, City of Santa Fé and City of Española voting in favor and none voting against.

DISCUSSION ITEMS:

I. Financial Report for June 2012 and July 2012

Mr. López presented the Financial Report for June 2012 and July 2012, noting that the printed reports were in the packet. He commented briefly on the financial report. They would be a little short on the budget but anything not spent would carry over. Since FY 13 had just begun, there was not much expenditure yet.

He also reported that the FTA audit was completed and they just got the results. That report would be presented at the September Board meeting.

The Attorney General's Office audit went back four years and would soon be available.

The annual audit would begin on September 1.

There were no questions on his report.

J. Finance Subcommittee Report

There was no Finance Subcommittee Report.

Mr. Mortillaro announced the Finance Subcommittee would be meeting on August 31.

K. Tribal Subcommittee Report

Ms. Valério reported the Tribal Subcommittee met on July 17 and discussed the membership of Nambé Pueblo. Thus far we haven't received any response from them.

Funding proposals were submitted in May and Ms. Trujillo had not heard anything back.

L. Executive Report for July 2012 and Comments from the Executive Director

Mr. Mortillaro said his report was in the packet.

He asked Mitch Davenport to brief the Board on the final stages of the construction project. Staff was able to move in on Friday and was touch and go on the final inspections. They got the final Certificate of Occupancy and had some items to follow up on. Hopefully, the Board was proud of the outcome. There were places that didn't get carpet like his office. Most of it was minor stuff.

Mr. Davenport said the building was substantially complete. A punch list had been created and was being worked on. It was a small list but there were serious things on it. The HVAC wasn't working although it was working now. The defective part would be installed today. He was unhappy with the lack of cleanliness at walk through but it had been cleaned now. The exterior irrigation was not working and the exterior electrical wasn't completed yet. Some of the toilets' automatic flushing was not working.

They received the certificate of occupancy 9 days late and we would work on that.

Councilor Rodgers asked if it was on budget.

Mr. Davenport said it was not but he couldn't point to the general contractor that the change orders were all his fault. But it was a good quality building and if there were problems, the contractor would back up his work.

Mr. Mortillaro announced that August 17 at 11:30 was the ribbon cutting. The moving was a challenge

but they got through it.

Mr. Mortillaro sent an email to Board members about the bandwidth of the phones. The Readinet services this building except they were not ready. They told us they would be ready but didn't get their agreement with Kit Carson Coop finalized. As a result, he had to find another internet provider and Tewa set up a wireless system that had its own problems with bandwidth because Tewa was dependent on Readinet too.

Windstream was supposed to come in next week to help with DSL service. The RTD phone system and dispatch was still with Rio Arriba County and it would remain there until the internet problem was solved.

Readinet apologized and hopefully would get the operations agreement finalized so we could light up the fiber later in August.

Lastly he asked to set an Executive Committee meeting later in the month for his annual review to present to the Board in September. September 7 was the next meeting.

He gave a big thank you to Mr. Tim Vigil at Buffalo Thunder for hosting the RTD in the past and for giving the Board a home when it didn't have a home. He also thanked all the other members who had contributed building locations and fleet maintenance site and for hosting the RTD meetings over the years.

MATTERS FROM THE CHAIR

There was nothing further to present.

MATTERS FROM THE BOARD

Mr. Bulthuis asked if Mr. Mortillaro could let Board members know the status of the financial specialist position interviewing.

Mr. Mortillaro said Brian Mirabal was hired and would start on Monday.

The Financial Analyst position announcement was going out and Mr. López in the meantime had used a temp employee. And behind the scenes was Kelly Muniz who had been working 10-15 hours per week in the evenings to help out. It was great that she was able to help along with her full time job.

MISCELLANEOUS

Next Board Meeting - September 7, 2012

ADJOURN

Having completed the agenda, the Board meeting adjourned at 11:55 a.m.

Approved by:

_____
Daniel R. Barrone, Chair

Attest:

_____
Geoff Rodgers, Secretary

Submitted by:

_____
Carl Boaz, Stenographer

Agenda Report
NCRTD Board of Directors Meeting
Meeting Date: September 7, 2012

Agenda Item - A

Title: Resolution No. 2012-20 creating an Ex-officio Nonvoting Board Seat on the Board of Directors of the NCRTD for the Rio Metro Regional Transit District.

Prepared By: Anthony J. Mortillaro, Executive Director

Summary: Resolution No. 2012-20 provides for an ex-officio nonvoting member seat for the Rio Metro Regional Transit District (RMRTD).

Background: The NCRTD several months ago requested the RMRTD add to its Board of Directors an ex-officio nonvoting member seat. The RMRTD Board approved this request and attached is their resolution providing for such. The RMRTD has requested that the NCRTD take similar action and add the RMRTD to its Board in a similar capacity (see attached letter). The Intergovernmental Agreement, specifically Article 6.02, Powers of the Board (i) allows for the addition of ex-officio members as needed. The Bylaws, in particular Article VII, (d) provide for ex-officio members to serve as advisor to the Board without voting powers.

Recommended Action: It is recommended that the Board adopt Resolution No. 2012-20 adding an ex-officio seat to the Board of Directors for the RMRTD.

Options/Alternatives:

1. Take no action; or
2. Adopt the resolution, (recommended); or
3. Amend the resolution and policy items and then take action to adopt.

Fiscal Impact: No impact.

Attachments:

1. NCRTD Resolution No. 2012-20
2. RMRTD Resolution
3. RMRTD Letter

Resolution: 2012-20

A RESOLUTION CREATING AN EX-OFFICIO NONVOTING BOARD SEAT ON THE BOARD OF DIRECTORS TO THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT (NCRTD) FOR THE RIO METRO REGIONAL TRANSIT DISTRICT (RMRTD)

WHEREAS, the combination of the following local governments: County of Santa Fe, City of Santa Fe, County of Rio Arriba, City of Española, County of Los Alamos, County of Taos and the Pueblo of San Ildefonso, Pueblo of Tesuque, Pueblo of Santa Clara, Pueblo of Pojoaque, and the Pueblo of OkhayOwingeh(**Members**) acting through their individual local governing body processes at various times in 2004 and 2008 entered intoIntergovernmental Contracts (**Contract**) to form what is now the NCRTD; and

WHEREAS, the **Members** and **Contract** was certified by the State Transportation Commission on September 14, 2004, as complying with the requirement of the Regional Transit District Act, New Mexico Statutes, Chapter 73, Article 25 (Section 73-25-1- to 72-25-18) NMSA 1978(2003); and

WHEREAS, upon Certification by the State Transportation Commission on September 14, 2004, the NCRTD became a separate political subdivision of the state of New Mexico; and

WHEREAS, the**Contract**and the Board of Directors Bylaws adopted as amended on January 12, 2007contained provisionsfor creating and maintaining a Board of Directors and establishing policy for theNCRTD; and

WHEREAS, the NCRTD contributes fifty percent (50%) of the Gross Receipt Tax it collects in Santa Fe County to the RMRTD for New Mexico Rail Runner Express (NMRX) Operations; and

WHEREAS, the NCRTD has requested representation on the RMRTD Board of Directors in consideration of its contribution to NMRX; and

WHEREAS, the NCRTD funds and operates transit services that provide connections to the NMRX and expands the reach of connected transit services to the counties of Santa Fe, Rio Arriba, Los Alamos and Taos; and

WHEREAS, the RMRTD Board of Directors on April 20, 2012 passed resolution No. 12-09 granting the NCRTD an Associate membership (non-voting) on the RMRTD Board of Directors; and

WHEREAS,the RMRTD has requested a reciprocal representation on the NCRTD Board of Directors.

NOW THEREFORE, BE IT RESOLVED BY THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT BOARD OF DIRECTORS THAT:

The NCRTD Board of Directors hereby adds an ex-officio non-voting member seat for the RMRTD on the NCRTD Board of Directors.

PASSED, APPROVED, AND ADOPTED this 7th day of September, 2012 by the Board of Directors of theNCRTD.

_____

Dan Barrone, Chairman, Board of Directors

Approved as to form:

_____

Mark A. Basham, Counsel

RIO METRO
REGIONAL TRANSIT DISTRICT

Resolution: R-12-09

GRANTING AN ASSOCIATE MEMBERSHIP ON THE RIO METRO REGIONAL TRANSIT DISTRICT (RMRTD) BOARD OF DIRECTORS TO THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT (NCRTD)

WHEREAS, the Combination of the following local governments: County of Valencia, City of Belen, Village of Los Lunas, Village of Bosque Farms, County of Bernalillo, Village of Los Ranchos de Albuquerque, City of Albuquerque, County of Sandoval, City of Rio Rancho and Town of Bernalillo **(Combination)** acting through their individual local governing body processes at various times in 2004 and 2005 entered into the Mid Region Transit District Governmental Unit Contract **(Contract)** to form what is now the RMRTD; and

WHERAS the **Combination** and **Contract** was certified by the State Transportation Commission on March 29, 2005 as complying with the requirement of the Regional Transit District Act, New Mexico Statutes, Chapter 73, Article 25 [Sections 73-25-1 to 73-25-18] NMSA 1978; and

WHEREAS, upon Certification by the State Transportation Commission on March 29, 2005 the RMRTD became a separate political subdivision of the state of New Mexico; and

WHEREAS, the **Contract** contained provisions for creating and maintaining a Board of Directors and establishing policy for the RMRTD; and

WHEREAS, the Village of Corrales was added to the RMRTD **Combination** on September 7, 2006 by Board action approving Mid Region Transit District Resolution R-06-06; and

WHEREAS, the Bylaws governing the Rio Metro Regional Transit District were adopted on March 7, 2007 by Board action approving Mid Region Transit District Resolution R-2007-01; and

WHEREAS, the Bylaws were amended on April 20, 2012 by RMRTD Resolution R-12-08 to add provisions for granting an Associate Membership (non-voting membership) on the Board of Directors to governmental units or other entities where determined appropriate by the Board; and

WHEREAS, the North Central Regional Transit District Contributes 1/16th of one percent of the Gross Receipt Tax it collects in Santa Fe County to the RMRTD for New Mexico Rail Runner Express (NMRX) Operations; and

WHEREAS, The North Central Regional Transit District has requested representation on the RMRTD Board of Directors in consideration of its contribution to NMRX; and

WHEREAS, the North Central Regional Transit District funds and operates transit services that provide connections to the NMRX and expands the reach of connected transit services to the Counties of Santa Fe, Rio Arriba, Los Alamos and Taos; and

WHEREAS, a two-thirds (2/3) majority vote by the Board is required to Grant Associate Membership on the RMRTD Board of Directors;

NOW THEREFORE, BE IT RESOLVED BY THE RIO METRO REGIONAL TRANSIT DISTRICT BOARD OF DIRECTORS THAT:

1. The RMRTD Board of Directors hereby grants the NCRTD an Associate Membership (non-voting membership) on the RMRTD Board of Directors.

2. The RMRTD Board of Directors requests representation on the NCRTD Board.

PASSED, APPROVED, AND ADOPTED this 20TH day of April 2012 by the Board of Directors of the Rio Metro Regional Transit District.

Mayor Larry Abraham
Vice-Chair
Board of Directors
May 10, 2012

ATTEST:

Dewey Cave
Chief Executive Officer
May 10, 2012

RIO METRO
REGIONAL TRANSIT DISTRICT

June 13, 2012

Mr. Daniel R. Barrone
NCRTD Chair
NCRTD 3600 Rodeo Lane, Suite B-6
Santa Fe, NM 87507

NORTH CENTRAL REGIONAL TRANSIT DISTRICT (NCRTD) REPRESENTATION ON THE RIO METRO REGIONAL TRANSIT DISTRICT (RMRTD) BOARD OF DIRECTORS

Dear Mr. Barrone:

Attached, please find resolution R-12-09 adopted by the RMRTD Board of Directors at their May meeting granting the NCRTD an Associate Membership (non-voting) on the RMRTD Board. This action was taken in response to NCRTD's request for representation dated December 8, 2011. In addition to granting the Associate Membership, the resolution also requests the NCRTD consider granting RMRTD representation on the NCRTD Board.

For RMRTD Board Membership roster purposes please send written notification identifying the NCRTD Associate Member on the RMRTD Board, and their alternate to Justina Trujillo at the RMRTD Office located at 809 Copper Avenue NW, Albuquerque, NM 87102.

We believe that a close working relationship between RMRTD and NCRTD is critical for the success of both agencies, and look forward to your participation on the RMRTD Board as we move forward. The New Mexico Rail Runner Express (NMRX) and the connective services provided by both RTD's and others provide connectivity across nine counties with public transit system stretching over 220 miles. The ability for both agencies to participate in decisions with each other is important to ensuring viable public transit connectivity in New Mexico.

In addition to cross representation on each RTD Board, we would like to discuss options for annual joint meetings. We believe there are many opportunities for the agencies to work together for the benefit of our respective constituents and all of New Mexico.

Sincerely,

for Mayor Larry Abraham
RMRTD Acting Chair

cc: Anthony Mortillaro, NCRTD Executive Director
Terry Doyle, MRCOG Transportation Director
Dewey Cave, MRCOG Executive Director

MID-REGION COUNCIL OF GOVERNMENTS
RAIL RUNNER

BOARD OF DIRECTORS
Mayor Larry Abraham, Acting Chair, Board of Directors, Mayor Richard Berry, Councilor Rey Garduño, Councilor Isaac Benton, Councilor Don Harris, Councilor Debbie O'Malley, Councilor Michael Cook, Mayor Rudy Jaramillo, Commissioner Maggie Hart-Stebbins, Commissioner Art De La Cruz, Commissioner Michael Weiner, Mayor Jack Torres, Councilor Wayne Ake, Councilor John Alsobrook, Mayor Robert Vialpando, Commissioner Donnie Leonard, Commissioner Mary Andersen, Councilor Tamara Gutierrez, Councilor Lonnie Clayton

ADMINISTRATION
Dewey V. Cave, Executive Director • Terry Doyle, Director of Transportation

809 Copper Ave., NW • Albuquerque, NM 87102 • Phone: 505.247.1750 • Fax: 505.247.1753 • mrcog-nm.gov • riometro.org • nmrailrunner.com

Agenda Report
NCRTD Board of Directors Meeting
Meeting Date: September 7, 2012

Agenda Item - B

Title: Resolution No. 2012-12 Adding the Town of Edgewood as a New Member of the NCRTD

Prepared By: Anthony J. Mortillaro, Executive Director

Summary:This item was discussed at the June 1, 2012 Board meeting. The Board deferred action to the September Board meeting. The Board did ask that the Town of Edgewood provide additional information regarding their request to be added as a new Board Member. The Town Administrator was asked the following questions and provided the answers that follow.

1. Does the Town of Edgewood have a local service plan or does it have long range comprehensive plan that has a transportation element addressing transit?

Response: The Town of Edgewood does not have a local service plan and the comprehensive plan does not address transit presently.

2. Since the Town has no existing transit services other than the current service provided by the NCRTD, does the Town have any real property or facilities that could be utilized by District for parking of its transit vehicles/and or establishment of a satellite facility for the District?

Response: The Town does own 12 acres of undeveloped land and there might be an arrangement which could be worked out for parking.

3. Does the Town have any existing grants, taxes, and other revenues which it has either sought, obtained or possesses that in any way relates to Transit Services and what if any portion of said revenues could be dedicated to NCRTD uses?

Response: At this time there are no grants, taxes or other revenues for Transit Services.

4. Does the Town seek any new or additional services from the NCRTD? If so please provide a cost estimate of the services (NCRTD Staff can assist you with this) or in the alternative, a representation that no new or additional services would be sought and for what period.

Response: The Town is not seeking any new or additional services.

At the December 2, 2011 meeting the Board of Directors requested that the Executive Director and Chair send informational letters regarding membership in the NCRTD to all eligible non-member entities. Based upon those letters several inquiries were received from the Village of Questa and the Town of Edgewood. Based upon discussion with the Town of Edgewood representative, the Town conducted a public hearing and adopted Town of Edgewood Resolution No. 2012-11 indicating the Town Council's intent to join to the District.

The District currently provides a route that services the Town of Edgewood and departs at 5:55 A.M... This service originates in Edgewood and stops in Moriarty, Stanley, Galisteo, St. Vincent Hospital, PERA, South Capital RR Station, NMED District 2 and Santa Fe County Detention Center. The service then makes a return trip at 4:30 p.m. and picks up passengers at the same locations. The yearly estimated cost for this service is approximately $98,041per the allocation method.

Background: In August 2010 membership interest was expressed by the Village of Chama. At that time the Board discussed this matter and directed the staff to submit to the Mayor of Chama a letter requesting additional information that the Board could use to ascertain the Village's interest. Based upon discussions with the NCRTD Staff a response was not received to the letter (see attached letter and minutes from the August Board meeting). However, in 2011the Mayor of Chama at an Eight Northern Pueblo's Regional Planning Organization meeting brought up the topic of membership again.

On November 9, 2011 a meeting took place with Nambe Governor Ernest Mirabal and Carol Woods, Tribal Administrator. At this meeting Governor Mirabal expressed interest in the Nambe Tribe becoming a member of the NCRTD. The discussions at the meeting focused on the Nambe Pueblo's interest in having transit services for their members, benefits of being a NCRTD member, proximity of existing services and possible adjustment of the Pojoaque Route to provide some limited adjacent service to the Pueblo at the entrance to NP 101 and the provision of information that the Pueblo can distribute to their members regarding NCRTD services. In addition the Nambe representatives expressed concern that they and two other pueblos (Taos and Picuris) were not being included in the District. Staff informed the Nambe representatives that contact had been made in the past with the Nambe Pueblo and Taos Pueblo. Information as to whether the District staff had reached out to Picuris is not available. In addition, Staff agreed to contact Taos and Picuris to inform them of the District services.

At the Boards December 2011 meeting, the Board based upon the aforementioned information directed the Executive Director and Chair to send an information letter to all qualified non-members regarding future membership in the District.

The Board Bylaws, Intergovernmental Contract and State Statue are vague as to the process o solicitation of information for membership into the District.The basic requirements for adding members are:

1.) Public hearing by the proposed member.

2.) Public hearing by the Board.

3.) An affirmative vote by two thirds (2/3) of the voting units of the Board of Directors (IGC) and two thirds of the directors (NMSA 1978, Section 73-25-6 (C).

4.) Execution of a new amended IGC based on the vote.

Recommended Action:It is recommended that the Board adopt Resolution No. 2012-12 adding the Town of Edgewood as a member (see attached Attorney's Memo dated August 15, 2012). In addition execution of a new amended Intergovernmental Contract will be required along with a modification of the weighted vote analysis.

Options/Alternatives:

1. Adopt the resolution as presented accepting the Town of Edgewood as a new member; or
2. Take no action on the resolution and the Town of Edgewood's request.

Fiscal Impact:Fiscal impact none, based upon Town of Edgewood's indication that no new or additional services would be sought.

Attachments:
Resolution No. 2012-12
Voting Strengths Analysis
Town of Edgewood Letter and Adopted Resolution
Chama Village Letter
Minutes from August 20, 2010 meeting
Membership section of the Bylaws, Intergovernmental Contract and State Statue
Minutes from December 2, 2011 meeting
Minutes from June 1, 2012 meeting
Attorney's Memo dated August 15, 2012
Santa Fe County Board of Commissioner's Resolution No. 2012-79

North Central Regional Transit District (NCRTD)

Resolution 2012-12

ALLOWING THE TOWN OF EDGEWOOD TO JOIN AS A MEMBER OF THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT (NCRTD)

WHEREAS, the NCRTD was created through legislative enactment (chapter 65, signed March 21, 2003); and,

WHEREAS, the NCRTD is a sub-division of the State of New Mexico; and,

WHEREAS, the NCRTD was approved and certified by the New Mexico Department of Transportation Commission September 14, 2004; and,

WHEREAS, the Town of Edgewood adopted Town Resolution No. 2012-11 showing the Town Council's intent to join the District on April 18, 2012; and,

WHEREAS, in order to create a truly effective and efficient regional transit system that cooperatively and equitably serves north central New Mexico, the NCRTD believes that the Town of Edgewood should be a member of the District.

NOW THEREFORE BE IT RESOLVED by the NCRTD that the Board of Directors accepts and approved the Town of Edgewood's request to join the District.

PASSED, APPROVED, AND ADOPTED BY THE GOVERNING BODY OF THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT ON THIS 7th DAY OF September 2012.

_____

Daniel Barrone, Chairman

Approved as to form:

_____

Mark Basham, Counsel

VOTING STRENGTH ANALYSIS – 2010 Census Update - April 2, 2012 with addition of Edgewood (9/7/12)

FINAL ANALYSIS – 5/10/20/40/80 THRESHHOLDS						
Member	**Population[1]**	**Population % of Total**	**Member Unit**	**Population Units[2]**	**Total Voting Units**	**Voting Units % of Total**
Española City	10,244	4.35	1	2	3	10.03
Los Alamos County	17,950	7.63	1	2	3	10.30
Taos County	32,937	14.00	1	3	4	13.338
Pojoaque Pueblo	367	0.16	1	0	1	3.334
Río Arriba County	25,611	10.23	1	3	4	13.338
San Ildefonso Pueblo	672	.29	1	0	1	3.334
Ohkay Owingeh Pueblo	2,791	1.2	1	0	1	3.334
Santa Clara Pueblo	3,132	1.33	1	0	1	3.334
Santa Fe City	67,947	28.9	1	4	5	16.6717.2
Santa Fe County	74,74971,374	31.730.3	1	4	5	17.216.67
Tesuque Pueblo	435	.18	1	0	1	3.334
Edgewood	3,375	1.4	1	0	1	3.33
TOTAL	**235,303**	**99.97**	1112	**18**	2930	**99.986**

TOTAL MEMBERS…1112
TOTAL VOTING UNITS…2930
QUORUM REQUIREMENTS….6 7 Members AND 15 16 Voting Units

SIMPLE MAJORITY VOTE…...15 16 Voting Units
TWO-THIRDS VOTE…….. 19 20 Voting Units

[1] Population estimates were extracted from 2010 United States Census data.
[2] Voting Units are awarded in the following manner: All Members receive one (1) vote by virtue of being a Member. Members receive one (1) additional vote for population between 5000 and 9,999; an additional vote for population between 10,000 and 19,999; an additional vote for population between 20,000 and 39,999; an additional vote for population between 40,000 and 79,999; an additional vote for population equal to or greater than 80,000.

TOWN OF EDGEWOOD

Where the Mountains Meet the Plains
1911 Historic Route 66
P.O. Box 3610
Edgewood, NM 87015
Phone: (505) 286-4518 Fax (505) 286-4519
www.edgewood-nm.gov

RECEIVED
MAY - 3 2012
By

May 1, 2012

Anthony J. Mortillaro, Executive Director
NCRTD Office
3600 Rodeo Lane Suite B-6
Santa Fe, NM 87507

Dear Mr. Mortillaro,

The Town of Edgewood is looking forward to becoming a member of the North Central Regional Transit District (NCRTD). Enclosed you will find Resolution No. 2012-11 passed and adopted on the 18th of April, 2012 showing the Town Council's intent to join.

We look forward to hearing from the NCRTD about the next steps in the process and I thank you for your assistance.

Sincerely,

Karen Mahalick
Administrator/Planner

Brad Hill
Mayor

John Abrams
Sherry Abraham
Chuck Ring
Rita Loy Simmons
Town Councilors

Wm. H. White
Municipal Judge

Karen Mahalick, AICP
Administrator/Planner

Jay Daniels
Chief of Police

Estefanie Muller
Clerk-Treasurer

Vicki Murphy
Animal Control Program Manager

TOWN OF EDGEWOOD
RESOLUTION No. 2012-11

RESOLUTION TO JOIN THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT AS A VOTING MEMBER OF THE DISTRICT AND PARTICIPATE IN THE AFFAIRS OF THE DISTRICT

WHEREAS, the purpose of the North Central Regional Transit District (the "District") is to serve the residents within District boundaries by providing for the creation of the Regional Transit District; provide a choice of transportation alternatives for goods, services, jobs, and activities of the community; and finance, plan, construct, operate, maintain and promote a regional public transit system.

WHEREAS, the Legislature of the State of New Mexico has passed legislation and the Governor has signed into law, the "Regional Transit District Act;" and

WHEREAS, public transportation is a critical component of multimodal transportation systems; and

WHEREAS, statewide, multimodal transportation systems improve access to education and jobs and provide a foundation for New Mexico's economic prosperity; and

WHEREAS, expanded public transit services help rural and urban New Mexico optimize available regional services; and

WHEREAS, a statewide connection of regional transit district would improve local and state connections; and

WHEREAS, regional public transit would enable increased federal investment in New Mexico; and

WHEREAS, multi-jurisdictional transportation systems would protect our environment and enhance energy efficiency, decrease congestion, decrease automobile accidents, reduce noise and air pollution and improve public health; and

WHEREAS, coordinated regional public transportation would help sustain New Mexico's cultural diversity; and

WHEREAS, regional transit districts function to coordinate public transit services and connects all forms of existing and proposed transportation services provided by different levels of government and various jurisdictions; and

WHEREAS, improved public transportation services in New Mexico would extend the life of existing roads, highways, and regional transit services, and protect current and future investment in the region's transportation infrastructure.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF EDGEWOOD THAT:

Section 1. The Town of Edgewood shall join the North Central Regional Transit District as a voting member of the District, and participate in the affairs of the District by appointing a representative, and a designee to the Board of Directors.

Section 2. The Town of Edgewood approves the Intergovernmental Agreement establishing the District, and any other relevant documents affecting the legal status of the District, and directs staff to actively work toward establishing funding for the said District in order to deliver ongoing regional public transportation services.

PASSED AND ADOPTED this **18TH** day **of April, 2012.**

Brad Hill, Mayor

ATTEST:

Estefanie Muller, CMC, Clerk Treasurer

August 25, 2010

The Honorable Archie Vigil
P.O. Box 794
Chama, NM 87520

Dear Mayor:

Thank you for your continued interest in being a member of the North Central Regional Transit District. The board is currently updating the Inter-governmental Contract that addresses new membership. While the board proceeds with the process we would respectfully request the following items to be submitted to my office for consideration to the board for membership:

(a) Records showing whether the applicant has held at least one public hearing on any proposal to join the NCRTD in accordance with Section 73-25-4 of the Act and whether the applicant has met all requirements for public notice of said meeting; and

(b) A written application or letter requesting membership following the public hearing; and

(c) The minutes of the public hearing; and

(d) Existing local service plan for Transit Services in or around the Governmental Unit; and

(e) Proposal for disposition of any facilities, real property, transit vehicles, transit system signs or other transit related property of the applicant specifically stating whether the property is to be retained by the applicant or conveyed to the NCRTD; and

(f) Any information or maps identifying existing routes, services or facilities currently provided by or within the Governmental Unit; and

Rosemary Romero
Chair

Josette P. Lucero
Executive Director

Governmental
Board of Directors

City of Espanola

City of Santa Fe

County of Rio Arriba

County of Santa Fe

County of Los Alamos

County of Taos

Ohkay Owingeh

Pueblo of Santa Clara

Pueblo of Pojoaque

Pueblo of Tesuque

Pueblo of San Ildefonso

NCRTD Office 3600 Rodeo Lane Suite B-6 Santa Fe, NM 87507 505-438-3257 / 505-438-0351 (fax)

(g) Any information regarding existing grants, taxes, and other revenues which the applicant has either sought, obtained or possesses that in any way relates to Transit Services and what if any portion of said revenues shall be dedicated to NCRTD uses.

(h) Any documents indicating what new or additional services the applicant intends to seek from the NCRTD along with a cost estimate of the services or in the alternative, a representation that no new or additional services shall be sought and for what period; and

(i) A concise statement as to why membership on the Board would substantially advance the public interests in regional transit.

If you should have any questions regarding this information that has been requested, please feel free to contact me at 505-438-3257. We look forward to continue to provide transit services to the Village of Chama.

Sincerely,

Josette Lucero, Executive Director
North Central Regional Transit District

Cc Rosemary Romero, NCRTD Chair

North Central Regional Transit District
Board Meeting
Friday, August 20, 2010

1. CALL TO ORDER:

A regular monthly meeting of the North Central Regional Transit District Board was called to order on the above date at approximately 9:00 a.m. by Chair Rosemary Romero at the New Mexico Association of Counties, 613 Old Santa Fe Trail, Santa Fe, New Mexico.

a. Pledge of Allegiance

b. Moment of Silence

c. Roll Call

Roll call indicated the presence of a quorum as follows:

Members Present:

Los Alamos County	Mr. Tony Mortillaro
City of Espanola	Councilor Robert J. Seeds
Rio Arriba County	Commissioner Elias Ortiz
Okkay Owingeh	Ms. Kateri Keevama
City of Santa Fe	Councilor Rosemary Romero, Mr. Jon Bulthuis
Santa Fe County	Ms. Penny Ellis-Green
Tesuque Pueblo	Mr. Larry Samuel
Taos County	Mr. Jacob Caldwell [telephonically]

Members Absent

Pojoaque Pueblo
San Ildefonso Pueblo
Santa Clara Pueblo

Staff Members Present

Ms. Josette Lucero, Executive Director
Mr. Jack Valencia, Transit Project Manager
Ms. Cynthia Halfar, Executive Assistant
Mr. Mark Basham, Counsel for NCRTD

Others Present
Mr. Andrew Jandáček, Santa Fe County
Mr. Greg White, NMDOT
Mr. Mitch Davenport, Facilities Manager

d. Introductions

Those present introduced themselves.

e. Approval of Agenda

Commissioner Cortz moved to approve the agenda as presented. Councilor Seeds seconded the motion and it passed by unanimous voice vote.

f. Approval of Board Meeting Minutes, July 30, 2010

Ms. Ellis-Green moved to approve the minutes of the July 30, 2010 Board meeting as presented. Chair Romero seconded the motion and it passed by unanimous voice vote.

g. Public Comments Regarding Transportation Items or Issues

There were no public comments.

2. ACTION ITEMS:

a. Approval of Resolution 2010-07 (Tabled 7/3/2010): Award of Bid for the Construction of the Jim West Transit Center

Ms. Lucero noted the resolution was in the packet that was presented at the last meeting. On July 30th they received a bid protest from the bid opening. There was plenty of discussion on July 30th. The Board asked staff to do the due diligence and bring a recommendation at this meeting. The bid protest was from DB Construction out of Albuquerque, protesting was on the other two companies' subcontractors.

So staff and Mr. Davenport did due diligence; made site visits to the companies and got all the information they could on it. The recommend today was to award the contract to R&M Construction. If approved, they could move forward.

Mr. Mortillaro noted that this resolution would make the award and asked if they had an award amount.

Mr. Basham said they knew what their bid was and what the budget was but the intent was to try to negotiate for a lower amount.

Mr. Mortillaro asked if the resolution could have a not to exceed number.

Ms. Lucero said that would be $1,183,465.

Mr. Mortillaro asked if that included GRT. He thought it was that amount plus GRT. Ms. Lucero agreed.

Mr. Valencia didn't have the amount but thought they could say not to exceed $1.3 million.

Chair Romero agreed.

Councilor Seeds was concerned since this company was not the lowest bidder and the Board needed to cover itself on that issue.

Chair Romero explained that this bidder met all the requirements. The lowest bidder had an unrealistic concrete price and was nonresponsive to all specifications. They promised a letter but it was never delivered.

Commissioner Cortz asked for clarifications. He wanted to make sure all the inspections had been done.

Mr. Davenport said they had all the engineers do a thorough investigation of the building, mechanicals and soils. As part of being sure, they took a core sample of the slab and opened up two walls and found they were sound. There were cross stress bars that they didn't expect so they had to make some change to the fenestration. With the soils inspection they knew what was needed to make sure it met the standards. The plumbing and electrical all had to come out and be redone.

The roof had some problems but they were patchable.

They were now doing asbestos and lead tests to know if remediation was needed.

It was a simple building and he was confident they had covered all the bases.

Mr. Valencia suggested that the amendment of up to $1.3 million be added on the last page after the comma "not to exceed $1.3 million."

Mr. Mortillaro moved to approve Resolution 2010-07 as amended with inclusion of "not to exceed $1.3 million. Councilor Seeds seconded the motion and it passed by unanimous roll call vote with Española, Los Alamos County, Okkay Owingeh, Rio Arriba County, Santa Fe City, Santa Fe County , Tesuque Pueblo and Taos County voting in the affirmative and none voting against.

b. Approval of Resolution 2010-08 (Tabled 7/9/2010): Pojoaque Fares

Ms. Lucero said this resolution was requested by Santa Fe County through the RPA. They were providing a demand response service for students living in Rio Arriba County. The students currently paid a fare of $1.00.

Mr. Bulthuis arrived at this time.

Ms. Lucero explained that Santa Fe County said it cost $58,000 to provide the service and they just allocated $40,000 from the RPA budget and would ask to charge $3 per student to meet the budget.

Ms. Lucero said they were bringing it back because they were already transporting these students.

Chair Romero said she sent out a history of this effort and the ridership report by email to everybody. She didn't hear back from anyone. The RPA heard it again this week and they were running behind because the route restarted on July 1. She asked Ms. Ellis-Green to comment on that meeting.

Ms. Ellis-Green added that the RPA discussed it briefly and agreed to either charge $3 or cap the budget at $40,000. There were students who had transferred from one district to another and the district made clear that the district was not responsible for their transportation.

Chair Romero said the RPA agreed to pay up to $40,000 and the rate increase would allow that service to continue longer.

Mr. Mortillaro thought they were not trying to mimic a school bus route so anyone could ride this route. Ms. Lucero agreed.

Mr. Mortillaro asked how the difference would be made up if the fare was not approved.

Ms. Lucero said the NCRTD would have to stop service when the $40,000 was entirely spent.

Mr. Mortillaro asked if the Board could look at funds for it at that time.

Ms. Lucero said they could but they were constrained now.

Commissioner Cortz said they were accomplishing transportation for a select few. He wanted this to be open. If he had this available for his son it would be very helpful but he had to take his son to school every day. He hoped this Board supported that opportunity. He had discussed it with some students' parents. He would abide by the board's decision but want the Board to know there were others.

Councilor Seeds agreed with Mr. Mortillaro and Commissioner Cortz. They needed to do what they could to get these kids to the school of their choice. There were some line items that they cushioned a little bit. He favored continuing the fares at $1 and not at $3.

Chair Romero said the RPA used a consultant to look at all the routes for efficiency and what the routes provided. The RPA wanted to live within its means so they took a pencil to each of them. The consultant's matrix was the most affordable but to pay the overage was just not feasible. The difference in this route was looked at by staff. Their budget had already been approved. They could see where they

were with GRT revenues and if there was not enough, this resolution would assure the parents that they could continue to have the transportation provided that was needed. The goal was more services and as efficiently as possible. It was a fall back if the RPA had no other money. Perhaps they could change the line items but this was a protection.

Ms. Ellis-Green said in fiscal year 2010 it was predicted to cost $11,000 but in FY 11 it was predicted to be $51,000. If they didn't have a cap, it could by $71,000 next year. They had a discussion of having a fixed route and found it could not be done that way.

Commissioner Coriz asked if this route was designated for a select few or for everyone. If the RPA had decided who got charged he wanted to be clear about it before they voted on it.

Ms. Lucero said it was open to the general public. The majority of those riding were the students. Española had to schedule the ride for the Pojoaque schools, and make sure the fares were in pace. The destination had to be clear for a demand response route.

Ms. Ellis-Green said the RPA was paying just for the students. The resolution was for the students crossing a district boundary.

Mr. Mortillaro asked if there was any other demand response in place.

Ms. Lucero said it was for a 15 miles radius from Española and the NCRTD charged a $1 fare.

Mr. Mortillaro asked if the $1 was being subsidized. Ms. Lucero agreed it was.

Ms. Keevama thought this was some discrimination. She asked why she as a student was being penalized. That might come back and bite the Board.

Chair Romero explained that the $3 fare was for anyone riding on that route, not just students.

Mr. Mortillaro said it was not quite coordinating for him with the differential. If one dollar would not meet the costs, he suggested raising the rate to $2 for all demand response.

Ms. Lucero said she could come back with that.

Ms. Keevama asked if the RPA did a survey found some number of students that did ride.

Chair Romero referred to the back of the memo where the ridership report was presented.

Ms. Lucero said the route now was over the $40,000.

Chair Romero said she was hearing that more work was needed on this resolution and it should determine overall costs for demand response. She asked for a motion

Commissioner Coriz moved to table this resolution until the October 1 meeting.

Councilor Seeds asked if anyone brought up the idea that it be a regular route.

Ms. Lucero said they had and it would be a lot more expensive.

Ms. Keevama seconded the motion to table and it passed by unanimous voice vote.

3. DISCUSSION ITEMS:

A. Finance/Regional Coordination & Consolidation Subcommittee Report

Mr. Mortillaro said the Subcommittee had not met since the last Board meeting.

Ms. Lucero said the next meeting of the subcommittee would be September 17th. The last meeting was on July 30th and that was the discussion at that meeting.

Chair Romero said at their next meeting they would have the discussion of the local/regional issue. Mr. Bulthuis, Mr. Caldwell and Councilor Seeds were on the work group to consider it before the Committee would consider it.

b. Request from Village of Chama to Begin Discussion of Membership Opportunities with the NCRTD

Ms. Lucero announced that they made a presentation to the Village of Chama. The mayor attended the meeting at Los Alamos three months ago. Staff were asked to review the contracts for new members. The IGC addressed the issue but the Board had not made a decision on local versus regional or new members.

She would get back to the mayor at some time soon. She also heard this week that the Town of Taos was going to pursue membership in NCRTD.

Mr. Mortillaro said there were lots of criteria they had to consider for new members. He asked if they had already adopted that.

Ms. Lucero said they had not. She wondered if they could make those requirements of potential members.

Mr. Basham recommended against that. The Board would need to provide notice and then could adopt them with a two-thirds vote. They issued a memo on June 7 2009 on this issue and it should be reviewed first.

Mr. Mortillaro asked if staff could ask them for that information anyway as part of due diligence.

Mr. Basham explained that some of the criteria asked for a contribution but asking for present service. He thought some of it would be okay.

Commissioner Coriz asked if it would be in order to give some administrative authority to staff to get that information.

Mr. Basham noted that this was a discussion item. He offered to meet with Ms. Lucero and figure out

what was not too burdensome.

Councilor Seeds asked what the practice had been.

Mr. Basham said Taos County had a public hearing and wanted to join and the Board voted to let them join.

Councilor Seeds asked if they could we use that same procedure.

Ms. Lucero read the criteria from the original IGC. She said there were eight more potential members.

Councilor Seeds thought those areas were already getting some RTD service so they needed to come up with criteria.

Chair Romero reminded the Board that this was discussion only. They were still clarifying things. They could review the criteria and the expected GRT. They could tell the mayor they were still working on it. Staff and Mr. Basham could continue to work on it.

Ms. Lucero agreed to draft such a letter.

Mr. Basham asked if they had passed a resolution.

Ms. Lucero said they just discussed it. The Town of Taos wanted to join too and have the RTD take over their system and their budget.

Commissioner Coriz said the Town of Taos had actually asked to join and the Board voted on it. They had the opportunity but now that the federal dollars were going away, they needed help.

Ms. Lucero said they needed to determine what their financial commitment would be.

Mr. Mortillaro thought they should treat Chama the same way.

Councilor Seeds said they also needed to share the criteria with anyone else who wanted to join.

Ms. Lucero felt the list they had was a great set of criteria and they just needed for the Board to take action.

Mr. Mortillaro pointed out that it required a change to the IGC that was a complicated process. He asked if there was a shorter way to do this.

Mr. Basham agreed to look at it to see what could be done. If it could, he would bring a resolution to the next meeting.

Mr. Mortillaro felt there shouldn't be any reason why the Board could not adopt the criteria.

Chair Romero summarized the discussion with a letter from Ms. Lucero and research by Mr. Basham.

4. MATTERS FROM THE BOARD

Councilor Seeds asked where the Subcommittee meeting on the 17th would be.

Mr. Mortillaro said they would meet at the NCRTD offices.

Chair Romero noted that the conflict of interest forms were sent out. Hector Balderas had a meeting on the issue. The take away for the City of Santa Fe was to form an audit committee to make sure they were doing everything they could. The conflict of interest form for NCRTD was drafted by Mr. Basham.

Chair Romero asked Ms. Halfar to send the draft form out for comments by September 10 and then the final form would be sent out when revised.

5. NEXT BOARD MEETING: FRIDAY, October 1, 2010 at 1:00 p.m.

Mr. Mortillaro offered to host the October 1 meeting in Los Alamos.

6. MISCELLANEOUS

There were no miscellaneous matters.

7. ADJOURNMENT

Councilor Seeds moved to adjourn the meeting. Commissioner Cortz seconded the motion and it passed by unanimous voice vote. The meeting was adjourned at 10:15 a.m.

Approved by:

Rosemary Romero, Board Chair

Attest:

Michael Wismer, Secretary

Minutes submitted by

(g) Accept real or personal property for the use of the District and accept gifts and conveyances upon the terms and conditions approved by the Board of Directors;
(h) Use the streets, highways, rail rights-of-way, and other public ways and, with permission of the owner, relocate or alter the construction of streets, highways, or other public ways, electric and telephone lines and properties, pipelines, conduits and other properties, whether publicly or privately owned, if deemed necessary by the District in the construction, reconstruction, repair, maintenance, and operation of the system. Any damage that may occur to the property shall be borne by the District;
(i) Sue and be sued.

Section 4.02. **Cooperative Powers.** The District may cooperate with a person/entity to:
(a) Accept legitimate contributions or liens securing obligations of the District from the person with respect to the financing, construction, operation, or maintenance of the transit system and, in connection with a loan or advance, enter into contracts establishing the repayment terms;
(b) Enter into contracts regarding the financing, construction, operation, or maintenance of the specified transit system;
(c) Enter into joint operating contracts concerning the transit system;
(d) Acquire easements or rights-of-way for the transit system;
(e) Designate a regional transit system as part of the State highway system, a County highway system, or a Municipal highway system if the person with jurisdiction over the applicable highway system consents to the designation.

Section 4.03. **Taxation.** The District has no direct taxation authority.

ARTICLE V
OFFICES

The principal office of the District shall be located within the geographical boundaries of the District and shall be designated by the Board of Directors. The District may have other offices at such other places within the State as the Board of Directors may from time to time determine. Board may add ex-officio members as needed.

ARTICLE VI
MEMBERSHIP

Membership in transit districts is open to governmental units, which means the State, a County or Municipality of the State, or an Indian Nation, Tribe, or Pueblo located within the boundaries of the State. The North Central Regional Transit District's original members may include any governmental unit (hereinafter, "Member") within or containing the boundaries of Los Alamos, Río Arriba, or Santa Fe Counties. Members may be added or deleted pursuant to Article VIII of these Bylaws and Section 73-25-17 of the Act.

ARTICLE VII
POWERS OF MEMBERS

A Member, for the purpose of aiding the financing, construction, operation, or maintenance of the transit system, may:

(a) Sell, lease, loan, donate, grant, convey, assign, transfer, and otherwise dispose to the District real or personal property or interests therein;

(b) Enter into agreements with a person for the joint financing, construction, operation, or maintenance of the transit system. Upon compliance with applicable constitutional or charter limitations, the Member may agree to make payments, without limitation as to amount except as set forth in the agreement, from revenues received from one or more fiscal years, to the District or a person to defray costs of financing, construction, operation, or maintenance of the regional transit system;

(c) Transfer to the District a contract that may have been awarded by the Member for the construction, operation, or maintenance of the transit system.

(d) Ex-officio members serve as advisors to the Board without voting powers.

ARTICLE VIII
ADDITION OR WITHDRAWAL OF TERRITORY AND PROPERTY

Section 8.01. **Joining the District.** After the creation of the District, a governmental unit adjacent to or contained within a governmental unit adjacent to, but not part of, the District may join the District as a Member and determine the territorial area to become a part of the District. A two-thirds (2/3) affirmative vote by the Board of Directors shall be required before the governmental unit may join the District.

Section 8.02. **Withdrawing from the District.** A Member of the District may withdraw from the District by adopting a resolution to withdraw. The Member shall withdraw its representative from the Board of Directors. Real property owned by the District within the boundaries of the withdrawing Member shall remain the property of the District. The provisions of withdrawal shall be negotiated and agreed to by the Board of Directors, the Member, and the Commission.

Section 8.03. **Inclusion or Exclusion of Property.** The Board of Directors may include or exclude property from the boundaries of the District, pursuant to Section 73-25-6 and Section 73-25-17 of the Act.

ARTICLE IX
BOARD OF DIRECTORS

Section 9.01. **Establishment of Powers.** The District shall be governed by a Board of Directors (hereinafter, the "Board") as described in the Act. The Board shall exercise and perform all powers, privileges and duties vested in or imposed upon the District. Subject to the exceptions in Section 73-25-5 of the Act, the Board may delegate any of its powers to an Officer or Agent of the Board.

Section 9.02. **Powers of the Board.** In addition to all other powers conferred by the Act, the Board may:

BASHAM & BASHAM, P.C.

MEMORANDUM
October 7, 2009

To: North Central Regional Transit Board
From: NCRTD Staff and Counsel
Re: Additional Membership

ISSUE: What is the process for changing Membership or boundaries of the District?

EXECUTIVE SUMMARY:

1. The NCRTD can add new members by Resolution with a two-thirds vote. Conditions can be imposed upon the addition of new members in the Intergovernmental Contract.

2. The NCRTD can add or subtract areas from its region by Resolution. The resolution needs a two-thirds vote and must be adopted after a public hearing. To add land that is not within a current Members jurisdiction requires approval of the city, county, tribe etc. that has jurisdiction in the area.

3. The Regional Transit Gross Receipts Taxes are completely independent of the Membership and depend upon the District boundaries.

4. Any Governmental Unit, whether it is a Member or not, can contract with the District to pay for regional transit system expenses or services.

5. A current Member can withdraw from the District but the terms of the withdrawal must be negotiated in a contract agreed to by the Board.

The Board should carefully consider its quorum requirements, logistics of a larger board the adequacy of the existing representation, and the adequacy of existing funding, prior to adding members or areas to the District or the District boundaries.

DEFINING THE ROLES:

The "Act" is the Regional Transit District Act. It is the "organic statute" meaning that it is the original source of all the NCRTD's authority. It uses the following terminology:

The "Board" is the combined representatives of the Members under the Act and the Intergovernmental Contract as described below.

The "District" means a regional transit district that is a political subdivision of the state created pursuant the Regional Transit District Act (note: the word District is usually used to describe the entity not the geographical region although the Act is inconsistent in its use of the term)

A "Governmental Unit" means the state, a county or a municipality of the state or an Indian nation tribe or pueblo located within the boundaries of the state. (note: this means that a Governmental Unit is any local or tribal government whether or not it is a Member of a District)

"Member" is not defined in the Act but is used to describe Governmental Units included in the District

"Directors" is not defined in the Act but is used to describe the representative of a Member to the Board.

The Act Requires that each Member of the District have at least one Director. It leaves open the possibility of multiple Directors for individual Members. Directors can be the designee of an elected official and can act on behalf of the Member at Board meetings on all matters except land purchases and bond issuances.

AUTHORITY FOR CHANGES:

The Act states that two or more Governmental Units "may create a district by contract." The contract creating the District in the case of the NCRTD is the "Intergovernmental Contract" (sometimes called the "IGC"). The Act requires that the contract include "establishment and organization of the board in which all legislative power of the district is vested", "boundaries of the district" "provisions for amending the contract" and "conditions required when adding or deleting parties to the contract." In summary, the Act provides the broad parameters of Authority for the District but it leaves much of the details to the Members who can implement changes by resolution or by amending the IGC.

1. Adding new Members.

The Act's provisions on adding new Members are a bit unclear due to the ambiguous use of the term District both to describe the entity and the region. It is further muddied by the terms of § 73-25-4 (B) (11) that states the IGC shall include "conditions required when adding or deleting parties to the contract pursuant to Section 18..." The use of the term "parties" instead of Members and the reference to Section 18 (which deals with matching funds) instead of Section 17 (which deals with adding or subtracting Members) makes the Act unclear. Furthermore, Section 17 is incorrectly titled "addition or withdrawal of territory by a district." even though it substantively deals with addition

and subtraction of Members. (Provisions regarding boundaries are actually in §73-25-6 (B) and (C)). All in all, I conclude that the controlling provisions on Members are actually §73-25-4 (B) (11) and § 73-25-17. These two provisions, read together, require the following. To add a member you have to change the IGC. The IGC should include any conditions the District wants to impose upon the admission of new Members. Any new Member must be "adjacent to" the existing District boundaries. The admission of the new Member requires a two-thirds vote of the Board and subsequent execution of a contract amendment or addendum to the IGC.

2. Changes to the Geographical Boundaries of the District.

The Board can add or subtract property from the geographical boundaries of the District by resolution upon a two-thirds vote of the Directors. The provisions regarding boundaries are contained in §73-25-6 (B) and (C). The boundaries can be changed without changing the IGC. The Board can include or exclude any areas covered by its current Members. For lands of non-Members the prior approval by the governing body of the Governmental Unit having jurisdiction is required. Any change to District boundaries requires a public hearing on the resolution. Changes to district boundaries can impact future tax elections under § 7-20E-23, NMSA 1978, but there is no provision of law permitting the change to a District's boundary to effectively negate a Regional Transit District tax already imposed by the electorate. Therefore the boundary change process would only impact future tax elections.

3. Taxing authority is independent of Membership and dependent on District boundaries.

The authority to impose the Regional Transit District Gross Receipts Tax is granted by § 7-20E-23, NMSA 1978. This is an entirely separate section of the law from the Act. The Act's only section dealing with taxes is §73-25-16 stating "a district has no direct taxation authority" clearly implying it has indirect taxation authority. Although § 7-20E-23 describes the initiation of the tax as a "request by resolution of the board of directors of a regional transit district" the "request" compels a majority of the governing body in every County within the District's boundaries to impose an identical tax ordinance. In reality the authority to impose the tax is with the electorate who vote on the tax and the statute simply provides a process whereby the Board can initiate and collect the tax through the counties. The tax is approved on a district-wide basis by the majority of the voters in the district. Although there is a temptation to look at the tax in terms of the Members (and particularly the counties since they are the conduit for the taxation) the taxes are authorized by the voters within the geographical boundaries of the District and the revenues belong to the District as an entity not to the counties or other Members within the district.

The taxes must be dedicated to the "purposes authorized by the Regional Transit District Act." These purposes are contained in § 73-25-2 and are very broad. Therefore, the allocation and use of the taxes is generally within the discretion of the Board so long as the taxes are being used for the purposes and under the powers authorized by the Act. However, the Act permits the District to further restrict its own exercise of powers in the

IGC and the Board has elected to Limit the District powers to "only finance, construct operate, and maintain, or promote Regional Transit Systems;" IGC, § 5.02 (a). This means that at present the District does not have authority to use the tax revenues for anything that does not constitute a "Regional Transit System." Furthermore, the District is expressly forbidden from funding or providing local services unless there is an agreement that the Member will pay the "fully allocated cost basis" IGC, §2.06(d).

4. The District can provide transit services both within and outside the District boundaries to Members and to non-Members.

The District has express authority to provide services both within and outside the District boundaries. (See § 73-25-6 (A) (6) and (10). And it is expressly authorized to enter into contracts with non-Members for delivery of regional transit services. §73-25-13 (B). This means that the District can work with other governmental entities on financing and providing regional transit services even if the entity does not have a Director on the Board. This provides an alternative to adding new Members to the Board. Services are however, restricted to regional transit services and reimbursement of local service expenses described above in section 3 of this memo.

5. Withdrawing as a Member.

The provision of the Act dealing with withdrawal of members is § 73-25-17. It should be noted that withdrawing as a Member only affects the Governmental Unit's right to have a Director and participate in the District decisions through representation on the Board. It does not impact the taxing authority of the District that is established by the District boundaries. Any member can withdraw at any time by resolution but the impact of withdrawing are: 1) loss of a Director and potential changes to the establishment and organization of the Board under the IGC; (i.e. the IGC provisions on proportional voting rights and Membership may need to be subsequently adjusted) 2) any geographical area within the former Member's jurisdiction that was not already within the District boundary will now require the approval of the former Member for inclusion in the District boundary; 3) and conditions already imposed upon withdrawing by the IGC pursuant to 73-25-4 (B) (11) may be imposed upon the former Member by contractual agreement prior to "deleting" them from the contract; 4) the District shall negotiate with the former Member on "provisions of withdrawal" (presumably those not already covered by the IGC) pursuant to § 73-25-17 (B).

POLICY RECOMMENDATIONS:

Any policy of the NCRTD is within the sound discretion of the Board. Staff makes these recommendations with the firm commitment to following Board direction and without any presumption as to the wishes of the Board.

1. Membership should be maintained at a level that ensures Board meetings will have a quorum, will ensure representation of the voters within the District, and will optimize the ability of the Board to provide regional transit services within the District.

If additional Governmental Units wish to work with the Board they can do so through contractual arrangements and need not become Members. The existing county Members have jurisdiction in all areas of the District except the areas of the tribal Members. Therefore, county Directors may serve as effective representatives of other Governmental Units within their counties.

2. The IGC should have express provisions regarding conditions for addition and Withdrawal of Members. At present the only provisions are those already set forth in the Act and a provision that "each ... member has executed the original Contract." See IGC §§ 2.04, 11.01, 11.02 and 11.04.

3. If the Board wants to be permitted to fund non-regional transit services with any of the tax money it receives or wants to provide local services for Members or non-Members under contract without receiving back the "fully allocated cost basis" of the transit service the IGA should be amended to reflect these changes.

4. Unless the Board wishes to impose taxes in counties outside the present District boundary there is little reason to change the District boundary. The boundary is primarily an area subject to taxing authority and an area of operation for planning purposes. But the NCRTD can provide transportation services outside the District boundary under the Act (though it is prohibited from doing anything but Regional Transit Services under the IGC). The Board may however wish to change the District boundary for planning purposes or to clarify its area of operations.

North Central Regional Transit District
Board Meeting
Friday, December 2, 2011

CALL TO ORDER:

A regular monthly meeting of the North Central Regional Transit District Board was called to order on the above date by Chair Rosemary Romero at 1:13 p.m. at the Buffalo Thunder Resort, Pojoaque, New Mexico.

1. **Pledge of Allegiance**

2. **Moment of Silence**

3. **Roll Call**

Roll call indicated the presence of a quorum as follows:

Members Present:	**Elected Members**	**Alternate Designees**
Los Alamos County	Councilor Michael Wismer	
Taos County	Commissioner Dan Barrone	Mr. Jacob Caldwell
Santa Fé County	Commissioner Robert Anaya	Commissioner Danny Mayfield
Rio Arriba County	Commissioner Barney Trujillo	
Ohkay Owingeh	Rob Lieb	
Pojoaque Pueblo	Mr. Tim Vigil	
San Ildefonso Pueblo	Councilman Raymond Martínez [T]	
Santa Clara Pueblo		Ms. Mary Lou Quintana
Tesuque Pueblo		

City of Santa Fé	Councilor Rosemary Romero	Mr. Jon Bulthuis
City of Española	Councilor Robert J. Seeds	
Members Absent:	**Elected Members**	**Alternate Designees**
Los Alamos County		Ms. Anne Laurent
Taos County		
Rio Arriba County		Mr. Tomás Campos
Santa Fé County		
Pojoaque Pueblo		Councilman Cameron Martínez
San Ildefonso Pueblo		Ms. Sandra Maes
Ohkay Owingeh	1st Lt. Gov. Virgil Cata	
Santa Clara Pueblo	Sheriff John Shije	
Tesuque Pueblo	Governor Charles Dorame	Mr. Sammy Romero
City of Santa Fé		
City of Española		Councilor Helen Kane-Salazar

Staff Members Present
Ms. Cynthia Halfar, Executive Assistant
Ms. Kelly Muniz, Financial Director
Mr. Tony Mortillaro, Executive Director
Mr. Jack Valencia, Transit Project Manager
Mr. Peter Dwyer, Counsel for NCRTD

Others Present
Mr. Greg White, NMDOT
Mr. Bob Sarr, Santa Fé
Governor Mirabal, Nambé Pueblo
Ms. Linda Woods, Nambé Pueblo
Mr. Mitch Davenport, Facilities Manager
Mr. Andrew Jandáček, Santa Fé County
Ms. Judith Amer, City of Santa Fé

4. Introductions

Those present introduced themselves.

5. **Approval of Agenda**

Commissioner Anaya moved to approve the agenda as presented. Commissioner Barrone seconded the motion and it passed by unanimous voice vote.

6. **Approval of Minutes for November 4, 2011**

Mr. Mortillaro asked for a correction on page 4, item C where it should said the Executive Director was authorized to spend up to $100,000 not $1,000.

Councilor Wismer moved to approve the minutes of November 4, 2011 as amended. Commissioner Anaya seconded the motion and it passed by unanimous voice vote.

7. **Public Comments**

There were no public comments.

PRESENTATION ITEMS:

A. Presentation to Honor Board Director and NCRTD Secretary/Treasurer, Michael Wismer

Chair Romero identified this as a big transition meeting. She presented a plaque and a gift to Councilor Wismer. He was not retiring but transitioning. She read the inscription on the plaque.

Commissioner Anaya felt no member was more important than another but Los Alamos had been especially supportive in contributions to the NCRTD.

Councilor Seeds thanked him for his professionalism and for being one of the moving forces to see that the support was done.

Commissioner Trujillo echoed his remarks and appreciated the way he conducted himself and taught others a few things as well.

Chair Romero thanked him for his gift of polity.

Councilor Wismer said he stepped in for his great colleague Jim West when he became ill. He thanked individual staff and board members - Mr. Valencia, Commissioner Trujillo, Councilor Seeds, Ms. Quintana, Mr. Caldwell, Commissioner Anaya, Commissioner Mayfield, Mr. Vigil, Mr. Dwyer, Mr. Mortillaro and Chair Romero and spoke of their individual contributions.

B. Presentation of Recognition and Appreciation for Retiring NCRTD Staff member Jack Valencia

Chair Romero acknowledged Mr. Valencia's service to the Board upon his retirement at the end of December. Mr. Mortillaro read the inscription from the plaque that listed his accomplishments with NCRTD and spoke of Mr. Valencia's work on behalf of the region.

Mr. Valencia thanked the Board members and staff for helping him do his job.

Commissioner Anaya and Commissioner Trujillo gave kudos to Mr. Valencia.

ACTION ITEMS FOR APPROVAL/DISCUSSION:

C. Approval of Resolution 2011-14: Open Meetings Act for 2012

Mr. Mortillaro said the Board adopts this annually and it sets the dates for regular meetings and how they conduct the meetings according to the Open Meetings Act. The only change was on April 6th which was Good Friday; otherwise it was first Friday of each month.

Commissioner Anaya moved to approve the resolution. Commissioner Trujillo seconded the motion and it passed by unanimous voice vote.

D. Approval of Resolution 2011-15: Resolution for the Renewal of Free Fares for 2012

Mr. Mortillaro asked Linda Trujillo to discuss this resolution. This was a renewal of the original resolution from 2008.

Ms. Trujillo called attention to the costs associated with using fare boxes and the benefits of continuing free fares instead of instituting fares for riding the buses.

Mr. Mortillaro shared the recent research on free fares for transit agencies. Thirty nine agencies around the country didn't charge - most were in small or rural communities - also universities. They found the biggest benefit was that it increased rider ship significantly. He felt that was very important.

The drivers get well acquainted with their passengers and indicated they would lose some if fares were started.

Mr. Boaz asked for a date correction from Dec 31 2013 to Dec 31 2012.

Chair Romero said the full report on fares was about 100 pages. There was a shorter version that was relevant to the work here.

Commissioner Anaya distributed a memo he wrote this morning. He said former Commissioner Sullivan had approached him about charging fares. He asked what the total estimated costs to just handle the money would be.

Mr. Mortillaro said it would cost $38,000 for installing fare boxes and another $37,000 to administer them. So $80,000 initially and roughly $40,000 thereafter.

Commissioner Anaya said it was the feeling of some that a more formalized method of tracking could be done better with a fare system. He asked if there was any other way to track the riders. When you charge a fare it was much easier to use.

Mr. Mortillaro said he rode one of the most modern transit systems in Europe not long ago and purchased an electronic ticket and watched others do the same. He saw people get on the bus without putting in any fare and the driver was busy and couldn't call them on it.

Mr. Bulthuis said with the size of the system and operation the manual tally was the most common across the country. Those fare boxes would not have a way to track occupancy but just revenue. These were not the validating fare boxes that the larger systems had and which were much more expensive.

Commissioner Anaya thought they should always analyze the resolution to dispel concerns about this way of doing business. This memo was written with the article in the Taos News that said how expensive the rider trips were.

Commissioner Anaya read his memo [attached as Exhibit A]. He acknowledged that the article could be written out of context. He acknowledged that they had to look at more than just the money. He fully supported the resolution.

Commissioner Anaya moved to approve the resolution. Commissioner Barrone seconded the motion.

Commissioner Barrone said if the NCRTD approved this they were taxing them with federal and local taxes.

Councilor Seeds agreed with Commissioner Barrone.

Chair Romero said they would have another look

The motion passed by unanimous voice vote.

Councilor Seeds suggested having a workshop ahead of this resolution next year. Chair Romero agreed to that directive.

Commissioner Anaya thought the workshop could be done at any time and the Board could consider changing the resolution at any time.

Councilor Seeds wanted to make sure they would do all they could to consider the taxpayers.

E. Approval of Resolution 2011-16: Requesting the Rio Metro Regional Transit District to Provide a

Board Seat to the North Central Regional Transit District

Mr. Mortillaro participated on the Rail Runner Finance Task Force and there was some discussion about seeing if NCRTD could get a seat on their board. They had an agreement and forwarded 50% of the Santa Fé portion of the NCRTD GRT to them for the Rail Runner. They indicated it would need a resolution.

He looked at the bylaws of Rio Metro. Theirs was quite a bit like ours and it would be a challenge to allow us to have a seat.

He was not sure of the politics among their members. This resolution makes a request for a seat but we might want to consider an ex officio seat. That wouldn't provide NCRTD with a vote but would officially recognize NCRTD as a member on their board. He thought it was a good idea.

The MPO also sent a letter requesting a seat for Santa Fé City and Santa Fé County. The MPO staff had not received a response to their request.

Rio Metro decisions did have an impact on Santa Fé so that was why it was an important consideration.

Chair Romero reported the City of Santa Fé had a meeting with Santa Fé County folks and Rio Metro folks back in the fall. Mayor Coss also requested a seat at the Rio Metro Board. The Mayor would defer to the RTD. He understood the dynamics of changing by-laws and IGAs would be very complex and challenging. So the City was amenable. They were a member of the MPO.

Councilor Wismer asked who was on that board now.

Mr. Mortillaro said it was representatives of Albuquerque, Bernalillo County as well as Sandoval County

Councilor Wismer asked what Mr. Mortillaro's role was there now/

Mr. Mortillaro clarified that he was on the Rail Runner Task Force for finances. They indicated they were having financial troubles and there were suggestions by Santa Fé County and representatives and they were forwarded to the Task Force. They now had a Governor's representative, a NMDOT representative and himself.

They came up with recommendations and one of the short-term ones was to approach the NCRTD for more money. So his preference was to have a vote. But it might be simpler to get an ex officio seat as a camel nose under the tent to get involved.

Councilor Wismer surmised it came down to at least being ex officio or to push for being a voting member. Mr. Mortillaro agreed.

Mr. Vigil wondered if the two could be tied together and Rio Metro be asked to grant voting privilege after two years. Then if they accepted the proposal after two years it would be automatic.

Mr. Mortillaro didn't know because the district was a geographic area. He questioned if they could put a district within a district or include Santa Fé County and put them into two taxing entities.

Mr. Dwyer noted later on the agenda was an item on considering other members. Other people were interested. Rio Metro had their own legal counsel and was free to disagree. The district boundaries were important for imposing taxes. The statute didn't do a good job about adding and subtracting members - not well written. Weighted voting was not addressed in the statute. They could give us one vote but not become a member of their district. So he thought it was possible but their legal counsel could disagree.

Commissioner Anaya said board members sat on various boards - RPOs or MPOs. They were going to be asked to sit on Mid Region RPO. Our one vote would not impact their decisions among those counties and cities so he would agree that they might not end up with a board seat but should still support the resolution. They were not unreasonable people. If it turned out to be ex-officio, so be it. He didn't think they would have a strong objection to us sitting at the table.

Chair Romero noted that they decided to reduce weekend service without talking with us. The NCRTD had to have some kind of representation. She wanted their whole board to understand the impact to our region when they take away weekend service. They made a decision and we have to have representation. She was hearing to seek full membership. Commissioner Anaya agreed.

Mr. Bob Sarr said he had followed the Rail Runner for a long time and strongly supported this resolution. The NCRTD definitely deserved to have a vote.

The motion passed by unanimous voice vote.

Commissioner Trujillo asked to hear Mr. Valencia's comment.

Mr. Valencia explained that originally when the decision was made it was to not be a voting member because of the insurance implications - that there could be a greater risk on our insurance costs because of greater liability exposure.

Mr. Mortillaro agreed that was an issue they discussed. A couple of weeks ago he and Mr. Dwyer met with the Municipal League and from their comments he no longer had that concern. Having a seat didn't change that.

Mr. Valencia apologized and was unaware of that conversation.

F. Discussion of New Membership Interests, Direction and Possible Board Actions

Mr. Mortillaro met with Nambé Pueblo about their interests in membership and with Commissioner Mayfield would meet with Governor Mirabal and the administrator Ms. Woods.

So he brought it forward for consideration. Also the Village of Chama was included in the minutes from

2010 about that. It had a list of questions to ask the Village and once answers were received could consider them for membership.

Staff wanted direction for how to handle requests for membership with a standard list of questions and could bring them to the next board meeting.

He asked Mr. Dwyer to talk about the lack of clarity in the bylaws.

Mr. Dwyer said a memo from two years ago was in the packet. It was based on a possible request to withdraw from membership. The key in the statutes was to look at geographic area as a taxing entity - through counties and not municipalities or pueblos. The statute didn't do a good job about how to do it.

The board amended the bylaws to add Taos County so it could be done. It required a 2/3 majority vote after a public notice and then take the IGA and get it re-executed by the counties. It took a long time last time. Then a new resolution on weighted voting would be needed. He didn't know how that was done but thought it was by subtracting populations of municipalities and pueblos in that county who were members.

Commissioner Anaya felt the broader the perspective, the better - so more members were better. So he would gladly help with Nambé Pueblo.

Councilor Seeds agreed. The RTD had a challenge ahead and needed to encourage other communities to partner with us and work out the voting. We got it done in the first place and need to improve on it. We'll need them to support this transit system soon.

Councilor Wismer supported those comments. He asked why they couldn't use the criteria in the by-laws. Ten items were listed but he thought they could use 3-4 of them - by-laws and IGA. A public hearing and then a vote - he asked if they could use that.

Mr. Dwyer agreed. The statute requirements were minimal. They worked on more details but they never got approved. So they would have a public meeting and then those seeking membership would indicate if they wanted to be members and then a 2/3 majority of votes and weighted votes and issue a revised IGA and everyone would have to support the agreement.

Councilor Wismer supported that.

Commissioner Mayfield asked Mr. Dwyer if they had to redo the weighted voting since the new census was completed.

Mr. Bulthuis didn't recall that was part of the original by-laws but it did make sense to do that.

Mr. Dwyer agreed it would make sense. The weighted voting was a resolution but not part of IGA or by-laws.

With a small member like Nambé and Chama, given their small size, would probably just get one vote. The core of the taxation scheme was that people in the area should have a say.

Commissioner Anaya moved to approve Nambé Pueblo and the Village of Chama as voting members.

Mr. Mortillaro conditioned it on doing these four things -

Commissioner Anaya asked about Edgewood whom the RTD already served.

Governor Mirabal was invited to speak and thanked the Board for that. His main concern was that Nambé was over 1.25 miles from the regular route and 2 miles to the pueblo offices. For now, he asked if it was possible to extend a route or stop at 101. That would be helpful.

Mr. Mortillaro said after they met with the Governor, he had staff look at it and found they could add a stop at 101 and could eliminate a couple of others so they would be putting that on a new schedule to start soon.

Mr. Vigil clarified that although minutes were part of public record, the tribal council minutes would not be made public but the Board would get a tribal resolution requesting membership in NCRTD. Under item 7 for turning over grants that entities might be getting, those grants were specific to the tribe for transportation so they probably would not be able to do that. Something about that would need to be written.

Mr. Mortillaro said Mr. Vigil was right and the rewritten tribal policy addressed that. Unfortunately the statute didn't include the tribal perspectives. He thanked Mr. Vigil for clarifying that.

Chair Romero suggested they could change that to add tribal process.

Mr. Dwyer clarified that there needed to be an open meeting for taxation purposes but our entities were already taxed. The statute was just poorly written.

Commissioner Anaya asked if he could finish his motion. Commissioner Anaya moved to approve Nambé Pueblo and the Village of Chama as voting members and to use the streamlined process and not compromise tribal sovereignty in any way. He added Picuris Pueblo, Edgewood and then made a substitute motion.

Councilor Anaya moved to send a letter to any eligible entity in the region through the streamlined process. Councilor Seeds seconded the motion.

Chair Romero said people did believe that if their entity joined the RTD they would get services but there was not extra money for that so she asked for a friendly amendment to have a resolution asking the county commissions to have a public meeting to consider whether these communities should be included with the understanding that the RTD had limited resources and people already had representation on the board through the County.

As a matter of record, the Town of Taos also asked for membership. We need to look at the Service Plan as a whole. Efficient services could help Nambé so there were ways to address it.

Commissioner Anaya didn't accept that as a friendly amendment. He would continue to advocate for membership expansion.

Councilor Wismer supported the motion but had a concern for pueblos that might want to apply under these provisions for pueblos - or in a case of a tribal government "as appropriate."

Mr. Dwyer thought that might be the way to go but they could not change the statute which required minutes of a public meeting. To the extent we didn't follow it that would not be legal.

Commissioner Anaya couldn't think of one legislator who wouldn't change the statute. **He accepted Councilor Wismer's friendly amendment to add "as appropriate."**

Mr. Dwyer said okay but was putting the Board on notice that he did notify the Board of the potential difficulty. He suggested the wording be, "or as appropriate from tribal entities."

Mr. Vigil didn't want to step on anyone's toes but there were plenty of statutes out there that wouldn't be followed on tribal grounds.

Mr. Dwyer agreed. It was just not well written and didn't contemplate this.

Mr. Vigil didn't think anyone would have a problem with it but if there was a question, they could contact state legislators.

Ms. Amer asked if tribes ever did public hearings.

Mr. Vigil said the invited guests would be asked to leave after discussion for a vote to be taken so it was not public per se. Each tribe was completely different - who sits on the council, who had a vote - it was just the way things were.

Mr. Dwyer added that the public meeting did not need to be part of a tribal council meeting. Maybe the Board could do that for the applicants. First they would need to check with them to see if that was okay.

Councilor Wismer said his amendment was to clarify that in the case of a tribal government to use an equivalent process.

Chair Romero said on page 2 they had 4 things and were trying to add to #3 to request instead of minutes of a public hearing an equivalent process. If they left #2 alone and ask for the changes to be on #3 it would be okay.

Commissioner Anaya thought having both was okay.

Commissioner Anaya said they dealt with the tribal governments regularly. He respected our legal counsel and was ready to vote.

Councilor Wismer summarized that they had a motion on the floor. He made a friendly amendment

which was accepted and also from #3 from Chair Romero so there were two friendly amendments.

Commissioner Anaya asked, once they were members, if he saw any problem with the balance of those things.

Mr. Mortillaro saw no problem.

Commissioner Anaya said it was then to talk with any entity in the region. Councilor Seeds was accepting the friendly amendments.

Mr. Caldwell believed the result would be a letter to tribes and municipalities in the region and thought when they received it they would consider themselves invited to be members. And then at a subsequent hearing of this Board, he thought they should develop the criteria and let those who were interested know about weighted voting as it stands today. But he asked if this passed if any entity that complied with the criteria would become a member.

Mr. Dwyer said it required a 2/3 majority vote of this board for that to happen.

Commissioner Anaya agreed. They would express interest or not and staff would report back those that were interested and the Board would have a public meeting with a 2/3 vote required.

Mr. Caldwell cautioned that the Board had to have the criteria for their membership and their understating of weighted votes. If that was done, he was fine with that. But until they established the criteria and how to process the requests there might be a delay.

Commissioner Anaya understood that. The letter needed to be clear that they were writing a letter to express interest in being a member of the board and then the Board would proceed through the rest of the process.

Mr. Caldwell thought should be tribes, pueblos and incorporated municipalities.

Mr. Dwyer said there was a list of eligible entities who could be members. They could sort it out at that time whether they qualified under the statute. The list was in the preamble of the statute.

Commissioner Anaya clarified that membership wasn't guaranteed. That needed to be clear in the letter.

Councilor Seeds proposed that staff should draft a letter and the Board approve it at the January meeting after review.

Ms. Amer thought they should deal with Nambé now.

Commissioner Anaya said if they opened the door partway it should be opened all the way. Everyone should be given the same opportunity. He reminded them that Cochiti was in his district and part of Santo Domingo - and they were sitting on the Rio Metro Board now and the train goes through their pueblo. So

there were other benefits. So he was okay in sending the letter to those eligible by the statute list.

Ms. Amer cautioned about avoiding a rolling quorum in the emailed responses. The members should only reply to Mr. Mortillaro to avoid that.

Commissioner Anaya summarized the motion.

The motion passed by majority roll call vote with Los Alamos County, Rio Arriba County, Taos County, Santa Fé County, Pojoaque Pueblo, San Ildefonso Pueblo, Santa Clara Pueblo and City of Española voting in the affirmative and the City of Santa Fé voting against (because of lack of clarity).

Ms. Woods said they were confused. The reason they were here was because they were invited. She was from Tesuque but worked for Nambé. They just wanted to have the same services their fellow pueblos were receiving. Their job was to provide services to their people.

Chair Romero invited her to attend the Tribal subcommittee.

DISCUSSION ITEMS:

G. Update of the Jim West Regional Transit Center

Mr. Mitch Davenport reported that the building was doing well and close to being done but was not ready to be occupied because of the soil problem. They were now investigating two alternatives - one was a chemical ionization treatment to the soil and an engineer was working on it. It was a quarter of the price so they were looking into it. While it had been used extensive in the rest of the world it had hardly been looked at all in the US.

The other alternative was concrete. That would be a great surface for the parking lot but very expensive.

We could always go back to the original design but it was not likely to work. The area was notorious for bad asphalt work. That was where it stands.

Commissioner Trujillo was bewildered because when he looked at asphalt parking lots around there they seemed to be okay. They set the contract up and wanted to hold the company accountable without change orders and this was a major change order. He saw most businesses around there with pretty good parking lots - Lowes, Chili's WalMart. He was just frustrated.

Chair Romero agreed.

Commissioner Trujillo asked who knew what would happen with putting the chemical into that soil.

Mr. Davenport said the claims were no environmental problem in that process. He did think they could

have a parking lot like Lowes. But the guy who built that one thought it would fail.

We could do what everyone else did in that area but he wanted the Board to understand that it could fail in a short amount of time.

Councilor Seeds felt that whatever happened in the next few years, the NCRTD would get blamed for putting chemicals in the ground.

Mr. Davenport had hoped to have the estimates before this meeting but couldn't.

Councilor Seeds said it was just a high water table and having it float with the water would be best.

Mr. Davenport said their civil engineer was working on a concrete plan and another engineer was working on the ionization process. Nothing would be done without the Board's approval.

Councilor Seeds asked how much longer it would be to occupy it.

Mr. Davenport said it could be occupied by December 26.

Councilor Seeds asked what the Board needed to do.

Mr. Davenport said if the Board wanted to pay for concrete, we could start tomorrow. He shared concerns with Commissioner Trujillo that their estimate was not reasonable.

Mr. Mortillaro said it was $500,000 to $600,000.

Chair Romero said they wanted really very good numbers.

Mr. Davenport said the ionization numbers were fabulous but he needed to first know if it would work. Also he had never seen concrete for this size parking lot. Time was money and they were in the middle of winter so he could not say.

Mr. Vigil asked what kind of guarantee we would get on this from the contractor.

Mr. Davenport said it was one year with the State of New Mexico price agreement. That was why he was trying to do a risk assessment on this. If we spend that kind of money and think it could fail in five years - that's crazy. But if we find a product that performs the way ionization works, they claim 15 years in other parts of the world. It was worth our time to look into it.

Commissioner Mayfield suggested moving into it in December by throwing some base course on the parking area so it could be used.

Mr. Davenport thought the City of Española would cooperate to get us a certificate of occupancy. Normally landscaping and curb and gutter would have to be in place and they wouldn't have those things. It was an option and he had discussed it with the city.

Ms. Amer read the article in the Rio Grande Sun about the geological evaluation - Apparently the problem was known and yet was approved. She asked if that was the architect who did that.

Mr. Davenport said the article was very misleading. He was quoted several times with things he didn't say. He explained the process. Weston did borings on the site as a sample of what the soil was and made recommendations based on what the RTD wanted to do on it - drive buses on it. The soils report went to architect and civil engineer.

They recognized in the soils report that there was a high water table and it was important that these soils didn't get wet.

Councilor Wismer excused himself from the meeting at this time.

Mr. Davenport said when they stripped off the asphalt they sank down in mud. The design team designed it based on the soils report. So it was hard to say it was their fault. Looking back it would have been better to not take off all of the asphalt but that was a typical process. He didn't think he could say it was the architect's fault. The aim was still to open the building in February. Mr. Mortillaro agreed.

Mr. Mortillaro said if they could not do it with funds available, he would come back.

Commissioner Trujillo hoped they could get this done before the winter got worse.

H. Financial Report:

- **Regional Transit GRT**
- **Combined P-L Format**
- **Status of the FY 2011 Audit**

Ms. Muniz had worked very hard over the last year to get our finances in order. She briefly reviewed the GRT report and summarized that they were on track. They were one third through the fiscal year and were falling right where they should be on most line items. She noted she was still processing October invoices. Overall, the expenses were about 28% of budget.

This morning she got confirmation that the audit was submitted by the 30th so they met the deadline.

Chair Romero congratulated her for the achievement.

Commissioner Anaya asked if she just got the agency to be point where they didn't have all those concerns. Ms. Muniz agreed.

I. Finance/Regional Coordination & Consolidation Subcommittee Report

Mr. Caldwell said they had a discussion last time on two items. Now he was delighted that he would get a replacement as chair of Finance Comm.

J. Executive Report for November 2011 and Comments from the Executive Director

- **Request for Submittal of Letter to Los Alamos County Regarding the Progress Through Partnering Program**

Mr. Mortillaro said the Executive Report was in the packet.

He said the Los Alamos County Council would discuss the Progress through Partnering Program. They have $1.5 million for a regional project. He spoke with the chair and staff and they suggested we send a letter to renew that funding for the NCRTD. What he was requesting was authorization to send it.

Commissioner Anaya moved to approve the request. Commissioner Barrone seconded the motion and it passed by unanimous voice vote.

Commissioner Barrone asked if anyone would be there to speak to it.

Mr. Mortillaro said he would find out what they needed to do. There were other things that were funded and he didn't know how much they might award the NCRTD. We want them to renew the five year agreements that provided for a five year program.

Chair Romero asked him to email the letter to all board members. Mr. Mortillaro agreed.

Mr. Mortillaro said a gentleman from Ojo Caliente asked for a change in the route stop in their community and to let you know, Ms. Trujillo was able to add that stop.

Ms. Trujillo said he even offered to put up a sign for us. We were out of route stop signs.

Chair Romero appreciated her work and his contribution.

Mr. Mortillaro said they were not done with audits. The NMDOT Inspector General wanted to audit their pass-through federal funds that come to the District. Ms. Muniz was working with them on the audit. The FTA come February would also audit the district. So it was 5 audits in one year. And that was okay because it would put a line between what was past and what was going forward.

MATTERS FROM THE CHAIRWOMAN

- **Appointment of Secretary/Treasurer**

Chair Romero asked, with Councilor Wismer leaving the RTD, if the Board could postpone this matter until January when Councilor Geoff Rodgers would be present. The Board agreed.

- **Appointments for Chairpersons of the Tribal and Finance Subcommittees**

Chair Romero asked Tim Vigil to chair the Finance and Tesuque Pueblo to chair the Tribal Subcommittee. She thought Gov. Dorame would ask Sam Romero to do that.

She thanked Mr. Vigil for doing this. With his expertise and experience with Pojoaque he would do well.

MATTERS FROM THE BOARD

Commissioner Anaya suggested it wouldn't hurt to have multiple board members go to the audit exits. It was the chair's prerogative.

Chair Romero said she did invite the officers and would invite all board members so they could get further input.

Commissioner Mayfield thanked Mr. Mortillaro and staff for cleaning the shelters. He saw the article.

Councilor Seeds pointed out that the discussion on the parking lot had no decision.

Chair Romero said only a budget change request would bring it for a vote by the Board.

Mr. Mortillaro said if the option was within the budget we would move forward and if it was not, he would bring it to the Board.

Mr. Mortillaro and Chair Romero wished everyone a Merry Christmas.

MISCELLANEOUS

There were no miscellaneous items.

NEXT BOARD MEETING: January 6, 2011 at 1:00 p.m.

ADJOURNMENT

The meeting was adjourned at 3:45 p.m.

Approved by:

Rosemary Romero

Rosemary Romero, Chair

Attest:

Michael Wismer

Michael Wismer, Secretary

Submitted by:

Carl Boaz

Carl Boaz, Stenographer

BASHAM & BASHAM, P.C.

MEMORANDUM

August 15, 2012

To: NCRTD Board
From: NCRTD Counsel, Peter A. Dwyer
NCRTD Executive Director, Anthony Mortillaro
Re: **Vote Requirement for New Members**

ISSUE: What is the process for adding new members to the NCRTD and more specifically what are the voting requirements.

EXECUTIVE SUMMARY:

The laws and contracts entered into by the parties in the formation of the NCRTD require that a 2/3 majority of all members be present and that a 2/3 majority of all voting units of members present vote to approve any new member. But ex officio members who do not vote may be added by a simple majority vote of the voting units present.

ANALYSIS:

The NCRTD was formed pursuant to State Statutes contained in the Regional Transit District Act, NMSA 1978, § 73-25-1 et seq. (hereinafter the "Act"). In addition to the Act there are the Intergovernmental Contract (the "IGC") and the "NCRTD Board of Director Bylaws" (the "Bylaws") which implement the Act.

THE ACT

The Act reads "After the creation of a district, a governmental unit adjacent to but not part of the district may join the district and determine the territorial area to become a part of that district. **A two-thirds affirmative vote by the board** shall be required before the governmental unit may join the district." NMSA 1978, Section 73-5-17[1]. Clearly the statute does not address the case where a town within a county that is already

[1] Although this statue is entitled "Addition or withdrawal of territory by a district" it actually addresses membership not geographical areas and the addition of property is in fact addressed in Section 73-5-6 which also requires a 2/3 majority vote but expressly states a change to the IGC is not required to finalize that process.

part of the district joins the district. Nor does the law squarely address whether the 2/3 vote requirement is of all members, the members present, or of the voting units.

THE IGC

Article IX of the IGC is titled "Voting Requirements" and sheds some light on the process. Section 9.02 states that you need to have both a majority of the total number of members and a majority of the total number of voting units to have a quorum. Section 9.03 states that only a simple majority of the **voting units present** is required normally. Section 9.04 then states that "If a quorum is present, two-thirds (2/3) majority of the voting units is required for the following actions: (a) Addition or withdrawal of territory or property, pursuant to Article 8 of the Bylaws Article XI of this Contract, and Sections 73-25-6 and 73-25-17 of the Act;"[2] Section 11.02 appears to be the definitive section on this issue and states in pertinent part that "**An affirmative vote by two-thirds (2/3) of the voting units of the Board of Directors** shall be required before the governmental unity may join the District."

The IGC also has a section that specifically calls out ex-officio (non-voting) membership. Section 6.02 (i) simply states that the "Board may add ex-officio members as needed. Because this section says "as needed" and does not require that the new member "join the district" I believe a **simple majority of members present** is required.

THE BYLAWS

Section 8.01 of the Bylaws is similar to the text of the Act and the IGC but is not exactly the same. The pertinent section on voting states "**A two-thirds (2/3) affirmative vote by the Board of Directors** shall be required before the governmental unit may join the District." This section does not refer to the voting units.

CONCLUSION

The three sources of authority are not identical and are subject to interpretation. Under basic principles of law the three should be read in a manner that makes all three valid statements. The best way to interpret the three is to follow the most specific requirements which are contained in the IGC. **The vote requires a quorum of both Members and voting units. The vote requires a 2/3 majority of the voting units present.**

[2] Again note that the cited statutes and sections actually apply to addition of members and in fact Section 11.02 of the IGC is entitled "Addition of Members."

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SANTA FE COUNTY

RESOLUTION NO. 2012-79

A RESOLUTION SUPPORTING INCLUSION OF THE TOWN OF EDGEWOOD AS A MEMBER OF THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT

WHEREAS, Santa Fe County and the NCRTD have entered into an intergovernmental agreement to provide transit services from Edgewood into Santa Fe;

WHEREAS, NCRTD currently operates a regional public transportation system that includes a bus route between the Town of Edgewood and the City of Santa Fe, providing public transportation for communities in southern Santa Fe County, including the Town of Edgewood;

WHEREAS, the NCRTD Edgewood to Santa Fe route has experienced a steady increase in ridership, prompting replacement of the original fourteen passenger bus with a twenty eight passenger bus in April of 2012;

WHEREAS, a Regional Transit Gross Receipts Tax levied in Santa Fe County provides funding for the NCRTD transit services within Santa Fe County;

WHEREAS, it is estimated that the Town of Edgewood collects approximately $100,000.00 in Regional Transit Gross Receipts Tax dollars each year; and

WHEREAS, Santa Fe County has determined that inclusion of the Town of Edgewood as a member of the NCRTD will assist in ensuring that the public transportation needs of residents of southern Santa Fe County are considered and addressed by the NCRTD.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners for Santa Fe County supports the addition of the Town of Edgewood as a member of the NCRTD.

PASSED, APPROVED, and ADOPTED this 26th day of June, 2012.

THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

Liz Stefanics, Chair

SFC CLERK RECORDED 06/27/2012

Valerie Espinoza, County Clerk

APPROVED AS TO FORM:

6-15-12

Stephen C. Ross, County Attorney

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC RESOLUTIONS
PAGES: 2

I Hereby Certify That This Instrument Was Filed for Record On The 27TH Day Of June, 2012 at 10:01:03 AM And Was Duly Recorded as Instrument # 1673500 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy _____ County Clerk, Santa Fe, NM

SFC CLERK RECORDED 06/27/2012

Agenda Report
NCRTD Board of Directors Meeting
Meeting Date: September 7, 2012

Agenda Item - D

Title: Adoption of a Resolution No. 2012-21 Repealing NCRTD Board Resolution No. 2007-13 in Its Entirety and Adopting New Procurement Regulations.

Prepared By: Anthony J. Mortillaro, Executive Director

Summary: Resolution No. 2012-21 repeals the existing Procurement Regulations and replaces them with updated rules. The Finance Sub-committee reviewed the proposed Procurement Regulations at their August 31, 2012 meeting and recommend that the Board consider adoption as presented. The Sub-committee did request that a dollar threshold limit be incorporated into the policy section regarding multi-term contracts, which has now been incorporated into the document for the Board's consideration.

Background: The existing Procurement Policies were adopted on August 14, 2007 by Board Resolution 2007-13. These rules and regulations have not been reviewed or modified since their adoption. Many state regulations have changed over the course of time and it is incumbent that our Procurement Regulations are consistent with State law and Federal requirements. In addition, organizational experience with these Policies has shown that the policies in some cases lack clarity and specificity and the proposed revisions provide for clarification and enhancement. Lastly, the Federal Transit Administration completed a Financial Management Oversight (FMO) review and their final report dated July 3, 2012 suggested that the District develop an Ethics and Conflict of Interest Policy related to procurement (see attachment), enhance recording keeping requirements and development of a dispute and protest procedures related to procurements.

Recommended Action: It is recommended that the Board consider adoption of Resolution No. 2012-21 adopting Procurement Regulations.

Options/Alternatives:

- Take no action and continue to utilize existing procurement regulations; or
- Adopt the resolution, with modifications by the Board; or
- Adopt the resolution as presented (recommended).

Fiscal Impact: None

Attachments:

- Current Procurement Policies
- Revised Procurement Regulations

North Central Regional Transit District (NCRTD)

Resolution 2012-21

Resolution No. 2012-21 Repealing NCRTD Board Resolution No. 2007-13 in Its Entirety and Adopting New Procurement Regulations

WHEREAS, the NCRTD was created through legislative enactment (chapter 65, signed March 21, 2003); and,

WHEREAS, the NCRTD is a sub-division of the State of New Mexico; and,

WHEREAS, the NCRTD was approved and certified by the New Mexico Department of Transportation Commission September 14, 2004; and,

WHEREAS, the NCRTD adopted regulations governing Procurement by Resolution No. 2007-13 on September 14, 2007; and,

WHEREAS, the state statutes governing procurement provide for local public bodies such as the NCRTD to enact their own policies and regulations for public purchasing consistent with state law; and,

WHEREAS, adoption of these Procurement Regulations will provide for the fair and equitable treatment of all persons involved in public purchasing by the NCRTD, to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity; and,

WHEREAS, the Board of Directors Finance Sub Committee on August 31, 2012 conducted a detailed review of the proposed procurement regulations and recommended that the Board consider the Procurement Regulations as presented.

NOW THEREFORE BE IT RESOLVED THAT the Board of Directors of the NCRTD, hereby adopts the revised Procurement Regulations as attached hereto.

PASSED, APPROVED, AND ADOPTED BY THE GOVERNING BODY OF THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT ON THIS 7th DAY OF SEPTEMBER, 2012.

_____

Daniel Barrone, Chairman

Approved as to form:

_____

Peter Dwyer, Counsel

North Central Regional Transit District

Procurement Regulations

Adopted by Resolution No. 2012-21

ARTICLE I. PROCUREMENT

1. Purpose.

The purpose of this Procurement Policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by the District, to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity. As provided in Article X, Section 6, of the Constitution of the State of New Mexico, in Section 13-1-98K NMSA 1978, the District may exercise all legislative powers and perform all functions not expressly denied by general law or by other provisions of the District Bylaws. In the absence of the exercise of any such power, the District may act in the manner provided by law. To that end, this article shall govern all purchasing transactions of the District and shall serve to exempt the District from all provisions of the New Mexico Procurement Code, Secs. 13-1-28 through -199 NMSA 1978.

2. Applicability of article provisions.

This article applies to the procurement of goods, services or construction, entered into by the District after the effective date of the adopting resolution. It shall apply to the expenditure of public funds for public purchasing irrespective of the source of the funds. When the procurement requires the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations. In the event of any inconsistency between the terms and conditions of this article and those of the federal contract, the latter will govern. The District may comply with the terms and conditions of any grant, gift or bequest that is consistent with law.

(a) These provisions shall apply to all employees or other users authorized to make purchases and all parties whose bid, offer or contract subjects them to these provisions.

(b) Purchasing for private or personal use, or use of the procurement process for such purpose, is prohibited.

(c) Enforcement and penalties – All managers, authorized users, and their supervisors are responsible for knowing, understanding, and adhering to the provisions of this article.

(d) Any person having knowledge of a deviation from these provisions shall report such to the Executive Director.

(e) Criminal violations can result in prosecution or penalties.

3. Exemptions.

(a) No provisions of the Procurement Policy except Section 8 and Article IX, shall apply to the following purchases:

(1) Advertising;

(2) Bond and debt service fees;

(3) Books, periodicals, publications and subscriptions;

(4) Credit or procurement card services;

(5) Employee work-related travel allowances and expenses;

(6) Freight and delivery charges;

(7) Instruction/education, any and all related fees, excluding employee travel;

(8) Insurance premiums;

(9) Legal and related costs incurred by the District , including expert witness costs and interpreters' fees, printing/duplicating costs, arbitrator/mediator, process server, court reporter, transcriptions, and settlements, hearing officer (s), but not including attorney contracts (see (b)(5) below);

(10) Medical services and emergencymedical services for and incidental to utilizing licensed medical professionals, but not including routine medical and psychological exams or lab tests pursuant to drug testing , pre-hire examinations or examinations related to reasonable accommodation;

(11) Memberships and dues;

(12) Travel or shipping by common carrier or by private conveyance or to meals and lodging;

(13) Office equipment repair and maintenance contracts;

(14) Postage or meter refills;

(15) Real property;

(16) Software and firmware updates or upgrades, minor;

(17) Taxes, licenses and filing fees;

(18) Purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection systems and telecommunications services.

(b) No provisions of the Code, except Section 8 and Article IX, shall apply to the following purchases, provided, however, that such purchases shall require a purchase order:

(1) Procurement of items of goods or services from a federal or state agency or other public entity.

(2) Procurement of goods, services, or construction items under existing contracts and that are procured under any of the following conditions:

a. At a price equal to or less than the contractor's current federal contract price (GSA, FSS), providing the contractor has indicated in writing a willingness to extend such contractor pricing, terms and conditions to the District ; or

b. With a person that has a current contract with the state Purchasing Agent or any other New Mexico governmental entity, for the item, services or construction meeting the same standards and specifications as the items to be procured; or

c. With a person that has a current contract issued under a cooperative purchasing agreement with another public entity; or

d. With a person that has an existing contract, that was subject to competitive solicitation, with another government or agency thereof.

(3) Purchases of motor fuels and compressed fuel gases.

(4) Works of art for public display.

(5) Legal services.

(6) Goods for resale.

(7) Unscheduled repairs which necessitate disassembly diagnostics.

(8) Contracts for televising or documenting public meetings.

(9) The Finance Manager shall retain the documentation relied upon to procure goods, services or construction without seeking competitive bids or proposals for public inspection and auditing purposes in accordance with established District records retention standards.

4. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Architect services means services which require a valid state license related to the art and science of designing and building structures for human habitation or use and may include planning, providing preliminary studies, design, specifications, working drawings and providing for general administration of construction contracts.

Authorized User means an employee who has been approved by management, and has received mandatory training in procurement, to conduct departmental purchasing.

Bid means a formal quote with a pre-determined set of specifications to which a bidder must answer or comply, which details the goods or construction, and the price of the items solicited.

Blind trust means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other disposition of, the property subject to the trust.

Brand name or equal specification means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance and other significant characteristics needed to meet District requirements, and which provides for the submission of equivalent products.

Brand name specification means a specification limited to one or more items by manufacturers' name or catalogue number.

Change order means a written order to the contractor authorizing an addition, deletion, or revision in the work within the scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

Confidential information means any information which is available to an employee only because of the employee's status as an employee of the District and is not a matter of public knowledge or available to the public on request.

Construction means the process of building, altering, repairing, installing, improving or demolishing any public structure or building, or other public or private improvements of any kind to any public real property. It does not include the routine operation or routine maintenance of existing structures, buildings or real property.

Construction management services may include but are not limited to performance of the following activities by the construction manager: monitoring and coordinating the work, schedules, personnel, equipment and materials of contractors with the activities of the District ; developing and monitoring project costs, change orders and pay requests; insuring compliance with all contract documents and applicable laws, rules and regulations.

Contract means any type of District agreement, regardless of its title, for the procurement of goods, services, or construction. This term shall not include employment agreements or collective bargaining agreements.

Contract modification (bilateral change) means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor means any person as defined below who has a contract with the District.

Cooperative purchasing means the use of a properly executed purchasing agreement with one or more additional public agencies to execute procurement.

Cost analysis means the evaluation of factual information concerning the cost of labor, material, overhead and other cost elements including profit which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Cost-reimbursement contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of the procurement code, and a fee or profit, other than a fee based upon a percentage of cost, if any.

Districtmeans the North Central Regional Transit District.

Definite quantity contract means a contract which requires the contractor to furnish a specified quantity of goods, services, or construction at or within specified time.

Direct or indirect participation means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

Dollar levelsmean United States currency, and all amounts shall be considered without New Mexico gross receipts tax (NMGRT).

Employee means an individual drawing a salary or wages from the District , whether appointed or not; any non-compensated individual performing services for the District or any department, or entity established by the executive or legislative branch of the District ; any non-compensated individual serving as an Director or Official Designee of the District .

Engineering services means any service or creative work, the adequate performance of which requires a valid state license and engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Such practice may include but is not limited to the performance of architectural work incidental to the practice of engineering. Engineering services does not include responsibility for construction management services, site conditions, operations, equipment, personnel or the maintenance of safety in the work place.

Evaluation committee means a committee appointed for the purpose of evaluating responses to bids or proposals and to determine, in writing, which is the most advantageous to the District based on the evaluation factors set forth. The evaluation committee members will remain constant through award. Except as specified in Section 38 (b) of this Procurement Policy, the evaluation committee shall be appointed by the department manager for whose department the goods, services or construction are to be purchased.

Financial interest means:

(1) Holding a position in a business as officer, director, trustee, or partner, or holding any position in management, or ownership of more than five percent interest in a business; or

(2) Any interest which may yield, directly or indirectly, any material benefit to an employee or to the employee's immediate family any interest other than an interest in a mutual fund or one held in a blind trust.

Goods means all tangible items, other than real property or construction, having a physical existence including, but not limited to, supplies, parts, equipment, materials, and printed materials.

Gratuity or Kickback means a payment, loan, subscription, advance, and deposit of money, service or anything of more than a nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate family means a spouse, children, parents, brothers and sisters, parent in-law, grandparent, grandchild, and step-relatives in a like relationship.

Indefinite delivery/Indefinite quantity or IDIQ contract means a contract which requires the contractor to furnish an indeterminate quantity of specified goods, services, or construction during a prescribed period of time at a definite unit price or at a specified discount or similar pricing structure from list or catalog prices.

Inventorymeans goods purchased for storage, issue, and ready use by users of the District.

Invitation for Bids or IFB means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed bids.

Multiple source award means an award to more than one bidder or offeror of a contract for one or more similar goods, services, or construction.

Person means any natural person, corporation, partnership, sole proprietorship, joint stock company, joint venture, private legal entity, or any federal, state or local political subdivision or entity thereof.

Price or Pricing structuremeans a pre-determined method, such as percentage charged for a category of items; or dollar amount as an itemized price listing, or as related to quantity, unit pack, or similar distinction, for which a vendor is willing to provide the District goods, services, or construction.

Price agreement means a form of IDIQ contract.

Price analysis means the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in determining prices to be paid and costs to be reimbursed.

Pricing data means factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Procurementmeans the buying, purchasing, renting, leasing, or otherwise acquiring of any goods, services or construction. It also includes all functions that pertain to the procurement process, including description of requirement, and awards of contract.

Professional services means the services of practitioners in a field requiring a state license, or an advanced degree, or a highly specialized education, or a nationally recognized certification; or person providing such services.

Projectmeans an activity with an explicit goal, that has a defined beginning and an end, that has at least one concrete deliverable, that has a logical sequence of activities that produce the deliverable(s), and that is not a repetition of an activity that has been previously planned and performed.

Project Managermeans the person assigned the responsibility for overall supervision of a Project. The responsibility includes, but is not limited to, budget monitoring, change order control, project schedule, quality control, approving progress payments, and insuring that work progresses in accordance with requirements set forth in the contract documents.

Proposalmeans a quote which may include open-ended, substantially bidder-determined specifications for how the bidder will provide the item(s), or different weights on different factors for evaluation; which details the goods, services, or construction, and the price of the items solicited.

Public agency or entity means a public entity subject to or created by any federal, state, or local governmental body.

Purchase order or PO means the legally binding document issued by the Finance Office, which has been appropriately approved before submission to a vendor, that authorizes a contractor or vendor to deliver goods, services or construction. There are two types:

(1) Regular (fixed amount and cost) – one which is used to procure a predetermined quantity at a predetermined price; and

(2) Open or Blanket Purchase Order – one which is used for anticipated numerous or recurring small purchases at a predetermined price or pricing structure for up to one year. It is a type of IDIQ contract.

Qualified products list means an approved list of goods, services or construction items described by model or catalogue numbers which, prior to competitive solicitation, the Purchasing Agent has determined will meet the applicable specification requirements.

Quote means a binding, good-faith statement of the price at which a vendor is willing to provide to the District required goods, services, or construction.

Request for Information / Interest or RFImeans all documents, whether attached or incorporated by reference, utilized for soliciting information to be used in developing specifications or a scope of work for services for an IFB, RFP, or RFQ, or for gauging interest in a future solicitation.

Request for Proposals or RFP means all documents, whether attached or incorporated by reference, utilized for soliciting proposals for goods, services or construction.

Request for Qualifications or RFQmeans all documents, whether attached or incorporated by reference, utilized for soliciting Statements of Qualifications for professional services.

Responsible bidder or offeror means a person, who has been determined by the Purchasing Agent or evaluating committee to have the capability in all respects to perform fully the contract requirements,

including the financial resources, personnel, service reputation and experience, capacity, production or service facilities, equipment and credit which will ensure satisfactory delivery of the goods, services or construction described in the IFB or in the RFP.

Responsive bidder means a person who has submitted a bid that conforms in all material respects to the requirements set forth in the IFB. Material respects of a bid may include but are not limited to, price, quality, quantity, and delivery requirements.

Responsive offeror means a person who has submitted an offer that conforms in all material respects to the requirements set forth in the RFP.

Rough order of magnitude estimatemeans an approximation without detailed data backup; has a range of accuracy equal to -25% to +75%.

Servicesmeans the furnishing of labor, time or effort, by contractors other than those providing professional services, services of employees of a state agency or local public body, or construction.

Software or firmware update or upgrade means an improvement to the functionality or security of computer software. There are two basic types:

(1) Minor – one in which the underlying software remains the same, and is usually identified by an incremental number change, such as ".1" or ".02".

(2) Major – one in which the software itself changes, either to a new operating system or as a new version, typically identified such as "Version 8" or "Name 2012".

Sole source selection means a one-time procurement which is subject to the following conditions:

(1) A good-faith review of available sources has been conducted, and

(2) A Letter or Memo of Justification is provided to the Finance Manager and Executive Director as documentation detailing the reason(s) why the source is the only one in the USA that provides the good(s) or service(s).

Specificationmeans any description of the physical or functional characteristics or of the nature of a good, service or construction item. It may include a description, any requirement for inspecting, testing or preparing a good, service or construction item for delivery.

Statement of Qualifications or SOQ means a formal documentation of experience or expertise for the purpose of obtaining information to permit the evaluation of the person most highly qualified to provide the required services.

Surveying services means any service or work, the substantial performance of which involves the application by a state-licensed surveyor of the principles of mathematics and the related physical and applied sciences.

Task order or Job ordermeans a discrete assignment of a specific set of tasks under an Indefinite Delivery/Indefinite Quantity contract, each order capped at a not-to-exceed amount.

ARTICLE II. OFFICE OF THE PURCHASING AGENT

5. Establishment.

The responsibility for administration of the provisions of this policy shall be under the Executive Director. The Executive Director shall have the responsibility and authority to insure that all provisions of law and this policy are followed and shall be authorized to issue any supplemental regulations consistent with this policy deemed necessary to administer, manage or clarify this Policy. Supplements issued by the Executive Director shall be attached to and made a part of this Policy. The Executive Director shall be responsible for having the knowledge to insure that all provisions of this Policy and all other purchasing concerns and activities of the District are appropriate and consistent with the most current, generally accepted purchasing techniques, and all provisions of the law.

There shall be a Purchasing Agent. The Purchasing Agent shall be the Executive Director who is the principal public purchasing official and whom may delegate these responsibilities to other staff as he may deem necessary and whoherein will be known as the Purchasing Agent for purposes of this Policy.

6. Authority and duties.

(a) *Principal public purchasing official.* Except as otherwise provided in this Article, the Purchasing Agent shall serve as the principal public purchasing official for the District and shall be responsible for conducting or supervising the procurement of goods, services or construction in accordance with this Article, as well as the disposal of surplus goods.

(b) *Duties.* In accordance with this article, and subject to the supervision of the Executive Director or his designee, the Purchasing Agent shall:

(1) Award purchase orders for procurement of all goods, services or construction needed by the District , upon approval of departments or the Executive Director as required consistent with operational procedures;

(2) Develop procedures to sell, trade, or otherwise dispose of surplus goods belonging to the District ;

(3) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the goods, services or construction;

(4) Conduct mandatory training sessions for new authorized users, and periodic training for all current authorized users;

(5) Review all procurement requests for correctness, appropriateness, and compliance with this Policy; and

(6) Establish and administer a District Procurement Card program.

(c) *Operational procedures.* Consistent with this article, the Purchasing Agent may adopt operational procedures relating to the execution of his or her duties.

7. Delegations to other District officials.

The Purchasing Agent may delegate authority to purchase certain goods, services or construction items to other District officials, if he or she deems such delegation necessary for the effective procurement of those items. This delegation will be in writing describing the authority granted. Notwithstanding the provisions of Section 6, procurement authority with respect to certain goods, services or construction may be delegated to other District officials by the Executive Director. This delegation will be in writing describing the authority granted.

8. Authority to execute contracts.

(a) *Purchase orders.* The District Board hereby delegates to the Executive Director the authority to execute purchase orders and bind the District.

(b) *Contracts.*

(1) For contracts the District Board hereby delegates to the Executive Director or designee the authority to execute the following contracts and bind the District:

a. Contracts other than purchase orders as provided in this Section, in the amount of $100,000.00 or less;

b. Any contract for the purchase of goods or construction in any amount less than or equal to the funding budgeted and specifically appropriated by the District Board for the acquisition or project;

c. Change orders or contract modifications to existing contracts, provided that the total amount after execution of the change order or contract modification does not exceed the funds budgeted or the adjusted budget and specifically appropriated for the project.

(2) The authority granted in Subsections (b) (1) is subject to the following conditions:

a. The goods, services, or construction was procured in accordance with this chapter as determined by the Purchasing Agent;

b. The contract is in a form acceptable to the District'sLegal Counsel;

c. There is no local, state or federal requirement that the chief elected official or other official must sign the contract;

d. Approval by the District Board if the purchase is in excess of $100,000.00.

(3) The Executive Directors power to delegate authority to execute contracts is limited to the contract amount of $100,000.00, exclusive of NMGRT, or less.

(4) All other contracts must be approved by the District Board prior to execution by the Executive Director, as appropriate.

ARTICLE III. SOURCE SELECTION AND CONTRACTS

9. Competitive sealed Invitations for Bids (IFBs).

The Purchasing Agent shall be responsible for developing procedures for processing, recording and securing all documents for bids. Confidential information shall be identified as such by the bidder, and subject to state laws regarding its handling. The user department manager shall appoint the bid evaluation committee and committee chairperson.

(a) *Conditions for use.* All contracts of the District shall be awarded by competitive sealed bidding except as otherwise provided herein.

(b) *Invitation for bids.* An IFB shall be issued and shall include specifications and a sample of the standard contractual terms and conditions applicable to the procurement.

(c) *Public notice.* Adequate public notice of the IFB shall be given a reasonable time, but not less than 15 calendar days prior to the date set for opening of the bids. Resolicitations shall be given public notice for a minimum of 10 days prior to the date set for opening of the bids. The publication of such notice shall be in a newspaper of general circulation within the District. Such public notice shall state the title, place, date and time of bid opening.

(d) *Bidders list.* The Purchasing Agent shall send copies of the IFBs to include, but not be limited to, those persons that have formally requested from the District the IFB documents for submitting bids for particular categories of goods, or construction, and which have paid in advance any required fees. The Purchasing Agent may set fees or deposits for different IFBs. Such fees shall be related to the actual direct cost of furnishing copies of the IFBs to the prospective bidders. Any deposit, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within the time specified in the documents for bid, which time limits shall be no less than ten calendar days after the date of the bid opening. All forfeited deposits shall be credited to the District.

(e) *Bid opening.* Bids shall be opened publicly in the presence of two or more District employees and any public present, including bidders, at the time and place designated in the IFB. The names of the witnesses will be made a part of the record, and any publicpresent, including bidders or offerors, will be given the option to record their names. The amount of each bid and such other relevant information as the Purchasing Agent deems appropriate consistent with the Inspection of Public Records Act, § 14-2-1 et seq., NMSA 1978, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection in accordance with the Inspection of Public Records Act.

(f) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Article. Bids shall be evaluated based on the requirements set forth in the IFB, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total of life cycle costs. The IFB shall set forth the evaluation criteria to be used. Only criteria that are set forth in the IFB may be used in bid evaluation. Interviews are to be used only for the purpose of clarification. The final evaluation results shall be forwarded to the Purchasing Agent.

(g) *Withdrawal of bids and cancellation of awards.* Bidder may withdraw its bid by written notice and received by Purchasing Agent prior to bid opening. After bid opening, no changes in bid prices or

other provisions of bids prejudicial to the interests of the District or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

(1) The mistake is clearly evident on the face of the bid document; or

(2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

Any decision to permit correction before withdrawal of bid or to cancellation of awards or contracts based on bid mistakes shall be supported by a written determination made by the Purchasing Agent including the grounds upon which the determination was made.

(h) *Negotiations.* If the low responsive and responsible bid for a construction project exceeds available funds as certified by the Finance Manager and such bid does not exceed such funds by more than ten percent (10%), the Purchasing Agent is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder in order to bring the bid within the amount of available funds..

(1) Should negotiation fail to reduce the cost, the Purchasing Agent may then negotiate with the next lowest bidder;

(2) Should negotiation again fail bidder to reduce the cost, the Purchasing Agent may then negotiate with the next lowest or cancel the bid.

(i) *Award.* The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB. An award may be made on an all-or-nothing or multiple source basis, consistent with Section 19 (b), whichever is the most advantageous to the District .

(j) *Multistep sealed bidding.* When it is considered impractical to prepare initially a purchase description to support an award based on price, an IFB may be issued requesting the submission of unpriced offers, which may include a separate sealed price proposal, or may be followed by an IFB limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

(k)*Identical bids.* When competitive sealed bids are used and two or more of the bids submitted are identical in price and are the low bid, the Purchasing Agent may:

(1) Award pursuant to the multiple source award provision of section 19 (b);

(2) Award by lottery or game of chance of the Purchasing Agent's choosing to one of the identical low bidders; or

(3) Reject all bids and re-solicit bids for the required goods, services, or construction.

Competitive sealed Requests for Proposals (RFPs) and Qualifications (RFQs).

The Purchasing Agent shall be responsible for developing procedures for processing, recording and securing all documents for RFPs and RFQs. Confidential information shall be identified as such by the proposer, and subject to state laws regarding its handling. The user department director shall appoint the bid evaluation committee and committee chairperson.

10. ***Conditions for Use of RFP.*** When the Purchasing Agent determines that, based on written justificationprovided by the user department, the use of competitive sealed bidding is either not practical or not advantageous in seeking the best value to the District, a contract may be entered into by use of RFPs.

    (1) Issuing the RFP. Proposals shall be solicited through an RFP which shall be issued and shall include the specifications for the goods, services or construction, a sample copy of the proposed contract terms applicable to the procurement unless waived by the Purchasing Agent, additional requirements specific to a particular procurement as may be in the best interest of the District, the location where proposals are to be received and the date, time and place where proposals are to be received.

    (2) Multistep RFPs. When, because of the unique set of qualifications needed the Purchasing Agent considers it impractical to prepare initially a solicitation which includes price, an RFP may be issued requesting the submission of Statement of Qualifications (SOQs) which include a separate sealed price proposal, or may be followed by an RFP limited to those offerors whose offers have been determined by the evaluation committee to be qualified under the criteria set forth in the first solicitation.

    (3) Public notice. Adequate public notice of the RFP shall be given in the same manner as provided in Section 9 (c).

    (4) Offerors list. The Purchasing Agent shall send copies of each RFP to at least those persons that have formally requested from the purchasing office the documents for submitting a proposal. Registration fees or deposits may be required as provided in section 9 (d).

    (5) Receipt of proposals. Proposals shall be handled so as to prevent disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

    (6) Evaluation factors. The RFP shall state the relative weight of price and other evaluation factors.

    (7) Evaluation of the RFP. Interviews are only for the purpose of clarification, and may be used for adjusting the initial score. The final evaluation results shall be forwarded to the Purchasing Agent.

(8) Discussion with responsible offerors and revisions to proposals. As provided in the RFP, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably likely to be selected for award for the purpose of clarification to ensure full understanding and conformation with the solicitation requirements for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by finalist offerors.

(9) Award shall be made to the responsible offeror whose proposal is determined in writing by the evaluating committee to be the most advantageous to the District, taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the written basis on which the award is made.

11. ***Conditions for use of RFQs.*** When the Purchasing Agent determines in writing, based on written justification provided by the user department that the use of an IFB or RFP is either not practical or not advantageous to the District in soliciting professional services, a contract may be entered into by use of competitive sealed RFQs. The Purchasing Agent shall publicly issue an RFQ for professional service providers to submit a Statement of Qualifications and to negotiate such contracts on the basis of demonstrated competence and qualifications and performance date.

(1) Issuing and processing the RFQ. The RFQ will be handled in the same manner as in subsections (1) through (7) of Section 10(a) above except for a price proposal, which is not used.

(2) Selection process. The evaluation committee shall select, ranked in the order of their qualifications, the person(s) deemed to be the most highly qualified to perform the required services, after considering the following criteria:

a. Specialized design or technical competence of the person regarding the type of services required;

b. Capacity and capability of the person, including any consultants, their representatives, qualifications, and locations, to perform the work, within the time limitations;

c. Past record of performance on contract with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules; and/or

d. Any other criteria as deemed necessary.

(3) Negotiation. Upon selection of the finalist(s), the Purchasing Agent or designee shall negotiate a contract with the person considered to be the most qualified for the required services at compensation which the Purchasing Agent or designee determines in writing to be fair and reasonable to the District . In making this decision, the Purchasing Agent or designee shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered. Should the Purchasing Agent or designee be unable to negotiate a contract at a fair and reasonable price with the selected person, the valuation committee shall select additional persons in order of their competence and qualifications, and

the Purchasing Agent or designee shall continue negotiations with the additional persons in the order of their competence and qualifications in accordance with this section until an agreement is reached.

12. Small purchases.

(1) *Generally.* Any purchase may be made in accordance with the small purchase procedures authorized in this Section. A purchase shall not be artificially divided so as to constitute a small purchase under this Section. Professional services not exceeding $50,000.00 may be but are not required to be conducted by competitive written proposal.

(2) *Any purchases not exceeding $10,000.00, exclusive of applicable gross receipts tax.* The Purchasing Agent shall adopt operational procedures for making small purchases not exceeding $10,000.00. Such operational procedures shall provide for obtaining adequate and reasonable competition for the goods, services or construction being purchased, properly account for the funds expended and facilitate an audit of the small purchases made.

(3) *Purchases from $10,000.01 to $35,000.00, exclusive of applicable gross receipts tax.* Insofar as it is practical, the purchaser shall solicit no less than three quotations. Award shall be made to the person offering the lowest acceptable quotation. The names of the persons from which quotations were solicited, and the date and the amount of each quotation, shall be recorded and maintained in accordance with established District records retention standards.

(4) *Procurement of professional services not exceeding $50,000.00, exclusive of applicable gross receipts tax.* Professional services having a value not exceeding $50,000.00 may be procured without competitive sealed bids or proposals. For Professional Services the department may determine available sources and negotiate directly with the prospective vendors. Competitive informal proposals or quotes are recommended in order to obtain the services in the best interest of the District, but are not required.

13. Sole source procurement.

A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that there is only one source for the required goods, service or construction item in the USA. A sole source selection may also result when there is only one respondent to an RFI as in Section 33(c)(2). The Purchasing Agent or designee shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of these procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, a letter or memo of justification documenting the reason for the selection of the source, and the identification number of each contract file.

14. Emergency procurements.

The Purchasing Agent may make or authorize others to make emergency procurements of goods, services or construction items when there exists a threat to public health, welfare or safety, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of

the contract, a listing of the items procured under the contract and the identification number of the contract file.

15. Cancellation of solicitations.

An IFB, an RFP or other solicitation may be canceled, or any or all bids or proposals may be rejected when it is in the best interests of the District. The reasons therefore shall be made part of the file. Each solicitation issued by the District shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part when in the best interest of the District. Notice of cancellation shall be sent to all respondents. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

16. Responsibility of bidders and offerors.

Determination of non-responsibility. If a bidder or offeror is found to be non-responsible, the Purchasing Agent shall prepare a written determination of nonresponsibility setting forth the basis of the finding. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. The final determination shall be made part of the contract file and be made public record.

17. Cost or pricing data.

(a) *Required submissions relating to the award of contracts.* A prospective contractor shall submit cost or pricing data when the contract is expected to exceed $500,000.00 and is to be awarded by competitive sealed proposals (Section 10) or by sole source procurement (Section 12). The submission of cost or pricing data relating to the award of a contract is not required when:

(1) The contract price is based on competitive bid;

(2) The contract price is based on established catalog prices or market prices;

(3) The contract price is set by law or regulations;

(4) The contract is for professional services;

(5) The contract is awarded pursuant to the Public Building Energy Efficiency Act;

(6) The Purchasing Agent determines in writing that the requirements of this Section may be waived, and the determination states the reasons for such waiver.

(b) *Required submissions relating to change orders or contract modifications.* A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustment to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in cost, plus applicable profits, that are expected to exceed ten percent (10%) of

original contract price. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

(1) An unrelated and separately priced adjustment for which cost or pricing data would not be required are consolidated for administrative convenience; or

(2) The Purchasing Agent determines in writing that the requirements of this Section may be waived, and the determination states the reasons for such waiver.

(c) *Certification requirements.* A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that, to the best of his or her knowledge and belief, the cost of pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

(d) *Price adjustment provision required.* Any contract award, change order or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the District , including profit or fee, shall be adjusted to exclude any significant sums by which the District finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the District and the contractor.

18. Cost or price analysis.

(a) A cost analysis or price analysis, as appropriate, shall be conducted by the evaluation committee or Project Manager prior to award of the contract when required under section 16. A written record of such analysis shall be made part of the contract file.

(b) Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data, as well as any available historical comparative data, to evaluate:

(1) Specific elements of costs;

(2) The necessity of certain costs;

(3) The reasonableness of amounts estimated for the necessary cost;

(4) The reasonableness of allowances for contingencies;

(5) The basis used for allocation of indirect costs;

(6) The appropriateness of particular indirect costs to the proposed contract; and

(7) The reasonableness of the total cost or price.

(c) Price analysis shall be made upon the following criteria for the same or similar items or services:

(1) Price submissions of prospective bidders or offerors in the current procurement;

(2) Prior price quotations and contract prices charged by the bidder, offeror or contractor;

(3) Prices published in catalogues or price list;

(4) Prices available on the open market; or

(5) In-house estimates of cost.

19. Bid and performance bonds on goods or service contracts.

Bid and performance bonds or other security may be requested for goods and/or service contracts as the Purchasing Agent or department manager deems advisable to protect the District's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for determination of a bidder's or offeror'sresponsibility.

20. Types of contracts.

General authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interests of the District will be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made by the Purchasing Agent that such a contract is likely to be less costly to the District than any other type or that it is impracticable to obtain the goods, service or construction item required except under such a contract.

(a) *Multi-term contracts.*

(1) Specified period. A contract can be for multiple fiscal periods, as needed. Unless otherwise provided by law, a contract for goods or services may be entered into for any period up to four years, subject to the following provisions:

a. that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation;

b. renewals or extensions may be for up to three consecutive one-year periods;

c. funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof;

d. a multi-term contract that exceeds the Executive Director's purchasing authority as provided in Section 8 of these regulations over the cumulative time period of a multi-year contract shall be brought to the District Board for initial approval;

e. construction contracts are exempt from the limit.

(2) Determination prior to use. Prior to the utilization of a mult-iterm contract, the Purchasing Agent shall determine that:

a. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

b. Such a contract will serve the best interests of the District by encouraging effective competition or otherwise promoting economies in District procurement.

(3) Cancellation due to unavailability of funds in succeeding fiscal periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any nonrecurring cost incurred but not amortized in the price of the goods or services delivered under the contract. Such cost of cancellation may be paid only from any appropriations available for such purposes.

(b) *Multiple source contracting.*

(1) Generally. A multiple source award is an award of a contract for one or more similar goods or services to more than one bidder or offeror. The obligation to order the District's actual requirements is limited by the provision of the Uniform Commercial Code, NMSA 1978, § 55-1-101 et seq.

(2) Limitations on use. A multiple source award may be made when an award to two or more bidders or offerors for similar products is necessary for adequate delivery, service or product compatibility. Any multiple source awards shall be made in accordance with the provisions of Sections 9 through -11, and 13, as applicable. Multiple source awards shall not be made when a single award will meet the District's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of the bids. Any such awards shall be limited to the least number of suppliers necessary to meet valid requirements.

(3) Contract and solicitation provisions. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract; provided, however, that:

a. The District shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; or

b. The District shall reserve the right to take bids separately if the Purchasing Agent approves a finding that the goods or service available under the contract will not meet a special need of the District.

(4) Intent to use. The District shall, in the solicitation document, reserve the right to make such an award.

(5) Determination required. The Purchasing Agent shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

(c) *Price agreements.*

(1) Generally. A price agreement is an award of an Indefinite Delivery/Indefinite Quantity contract for one or more similar goods or services to one or more bidder(s) or offeror(s). It is used for anticipated numerous or recurring purchases at a predetermined price or pricing structure over an extended time period. Task orders, once initiated within the contract term, will continue until the completion of the specific task without regard to term of the basic contract unless otherwise stipulated. Since a Price Agreement does not have specific delivery of goods or services required at inception, individual task orders or purchases shall be approved by the appropriate person in accordance with the approval levels in Section 8.

a. Limitations on Use. A price agreement may be awarded subject to the provisions in sections 9 through -12 and19 (b).

b. Intent to use. The District shall, in the solicitation document, reserve the right to make such an award.

(d) *Administrative Grouping of Requirements for Inventory*

(1) Generally. Administrative grouping of requirements for inventory recognizes that inventory replenishments or purchases are actually an aggregate of multiple discreet requirements. With this administrative grouping, each purchase order line stands on its own with respect to approval levels in section 8.

(2) Limitations on use. This method only pertains to items of inventory.

21. Contract clauses and administration.

(a) *Contract clauses.* All the District contracts for goods, service or construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Agent, after consultation with the District Legal Counsel, may issue clauses appropriate for goods, service or construction contracts, addressing among others the following subjects:

(1) The unilateral right of the District to order, in writing, changes in the work within the scope of the contract;

(2) The unilateral right of the District to order, in writing, temporary stoppage of the work or delaying performance that does not alter the scope of the contract;

(3) Variations occurring between estimated quantities or work in contract and actual quantities;

(4) Defective pricing;

(5) Liquidated damages;

(6) Specified excuses for delay or nonperformance;

(7) Termination of the contract for default;

(8) Termination of the contract in whole or in part for the convenience of the District ;

(9) Suspension of work on a construction project ordered by the District ;

(10) Site conditions differing from those indicated in the contract or ordinarily encountered, except that a differing site conditions clause need not be included in a contract when:

a. The contract is negotiated;

b. The contractor provides the site or design; or

c. The parties have otherwise agreed with respect to the risk of differing site conditions.

d. Insurance.

(b) *Price adjustments.* Adjustments in price resulting from the use of contract clauses by Subsection (a) of this section shall be computed in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(2) By unit prices specified in the contract or subsequently agreed upon;

(3) By the costs attributable to the events or situations under such clauses with adjustments of profit or fee, all as specified in the contracts or subsequently agreed upon;

(4) In such other manner as the contracting parties may mutually agree upon;

(5) In the absence of agreement by the parties, a unilateral determination by the District of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the District , as accounted for in accordance with generally accepted cost accounting principles and subject to the provisions of Article VII of this Chapter.

(6) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 16.

(c) *Standard clauses and their modification.* The Purchasing Agent, after consultation with the District'sLegal Counsel, may establish standard contract clauses for use in the District contracts. If the Purchasing Agent establishes any standard clauses addressing the subjects set forth in Subsection (a) of this section, such clauses may be varied, provided that any variations are supported by a written determination stating the circumstances justifying such variations.

(d) *Advance payment clause permitted.* Advance payment may be permitted when, in consultation with the District's Legal Counsel, the Purchasing Agent authorizes a contract under Section3 (b)4 Procurement of goods, services, or construction items under existing contract, and such prior contract relied upon contains an advance payment clause.

22. Cooperative procurement authorized.

The District may join, participate in, sponsor, or administer a cooperative procurement agreement for the procurement of goods, services or construction with any other federal agency, state agency or other public entity.

23. Cost reimbursement provisions.

Cost reimbursement contracts funded by federal agencies shall satisfy the requirements of 41 CFR 1-15.

24. Right to inspect plant.

The District may, at reasonable times, inspect the part of the plant, place of business or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the District.

25. Right to audit records.

(a) *Audit of cost or pricing data.* The District may, at reasonable times and places, with written notice, audit the records of any contractor who has submitted cost or pricing data pursuant to Section 16, to the extent that such records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such records that are pertinent to such cost or pricing data for six years from the date of final payment under the contract.

(b) *Contract audit.* The District shall be entitled to audit the records of a contractor or a subcontractor at any tier under negotiated contract or subcontract to the extent that such records are pertinent to the performance of such contract or subcontract. Such records shall be maintained by the contractor and subcontractor(s) for a period of six years from the date of final payment under the prime contract.

26. Reporting of anticompetitive practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the District's Legal Counsel for forwarding to the state attorney general.

27. District procurement records.

(a) *Public access to procurement information.* Procurement information shall be public record to the extent provided in the Inspection of Public Records Act.

(b) *Contract file.* All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the District in a contract file by the

Purchasing Agent. The documents attached to this policy are illustrative only and are subject to modification and change at the discretion of the Purchasing Agent.

(c) *Retention of procurement records.* All procurement records shall be recorded and maintained in accordance with established District records retention standards. All federal contracts shall be maintained for three years after the closeout date of the contract.

ARTICLE IV. SPECIFICATIONS

28. Maximum practicable competition.

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the District's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including, but not limited to, those prepared for the District by architects, engineers, designers and draftsmen.

29. Qualified products list.

The Purchasing Agent may develop a qualified products list, in accordance with Article V of this Chapter. Should any product be available only from a sole source, the using department and purchasing office must review specifications at least annually and make a written determination as to the sole source status. The qualified products list status shall in no way be used to limit competition.

30. Brand name or equal specifications.

(a) *Use.* Brand name or equal specifications may be used when the Purchasing Agent determines in writing that:

(1) No other design or performance specification or qualified products list is available;

(2) Time does not permit the preparation of another form or purchase description not including a brand name specification;

(3) The nature of the product or the nature of the District 's requirements makes use of a brand name or equal specification suitable for the procurement; or

(4) Use of a brand name or equal specifications is in the District's best interests.

(b) *Designation of several brand names.* Brand name or equal specifications shall seek to designate brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(c) *Required characteristics.* Unless the Purchasing Agent determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specification shall include a description of the particular design, functional or performance characteristics which are required.

(d) *Nonrestrictive use of brand name or equal specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard quality, performance and characteristics desired and is not intended to limit or restrict competition.

(e) *Exemption.* Small purchases described in Section 11(b) are exempt from this provision.

31. Brand name specification.

(a) *Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when the purchaser has justified and the Purchasing Agent makes a written determination that only the identified brand name item will satisfy the District 's needs.

(b) *Competition.* The Purchasing Agent shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 12.

(c) *Exemption.* Small purchases described in Section 11(b) are exempt from this provision.

32. Item Life-cycle specifications.

The District may use item life-cycle specifications in evaluating bids if such method is required in the IFB. Life-cycle specifications shall use criteria to take into consideration the initial purchase price, life, output, maintenance or consumption, disposal value, complexity of operation, required training and other factors contributing to the overall cost of an item.

33. Total cost specifications.

The District may use total cost specifications in evaluating bids if such method is required in the IFB. Total cost specifications criteria is the same as life-cycle specifications, except the disposal value has been predetermined and is included in the contract as an option. This option is to trade in at this predetermined fixed price, or sell at the District's option.

34. Complex specifications.

In the event a department develops a need for goods, service or construction with a complex set of specifications or scope of work and the department desires assistance to develop them, the department shall request in writing that the Purchasing Agent issue a Request for Information (RFI).

(a) The user department shall provide as much information as feasible to the Purchasing Agent for development of the RFI;

(b) The Purchasing Agent shall prepare the RFI and process it as in Section10;

(c) Upon receipt of the Information:

(1) If from multiple sources, the user department shall make a good faith effort to combine the various inputs into a coherent whole; or

(2) If from only one source, the department may use the document as the basis for a sole source justification.

(3) The information assembled in Subsection (c) (1) above shall be used as the basis for an IFB or RFP.

ARTICLE V. PROCUREMENT OF CONSTRUCTION MANAGEMENT AND CONSTRUCTION SERVICES

35. Selection of construction management. The Project Manager shall have discretion to:

(a) select the appropriate method of construction management for a particular project. In determining which method to use, the Project Manager shall consider the District 's requirements, its resources, and the potential contractor's capabilities;

(b) select which method of solicitation for construction management applies for a particular project, either as a single-step or multi-step RFP as in Section 10(a), or as an RFQ in Section 10(b) Article III.

36. Bid security.

(a) *Requirement.* Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the using agency to exceed $50,000.00. Bid security shall be a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactoryto the District. Such bonds on construction contracts under $50,000.00 may be required by the Purchasing Agent when the circumstances warrant.

(b) *Amount.* Bid security shall be in an amount equal to at least five percent (5%) of the total amount of the bid including all options.

(c) *Rejection of bids for noncompliance with bid security requirements.* When the IFB requires security, noncompliance requires that the bid be rejected unless it is determined the bid fails to comply only in a non-substantial manner with the security requirements.

(d) *Withdrawal of bids.* If a bidder is permitted to withdraw its bid before award as provided in Article III Section 9 (g) no action shall be taken against the bidder or the bid security.

37. Contract performance and payment bonds.

(a) *When required; amounts.* When a construction contract is awarded in excess of $50,000.00, the following bonds or security shall be delivered to the District and shall become binding on the parties upon the execution of the contract:

(1) A performance bond satisfactory to the District , executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the District , in an amount equal to one hundred percent (100%) of the price specified in the contract; and

(2) A payment bond satisfactory to the District , executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the District , for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

(b) *Authority to require additional bonds.* The District retains the authority to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (a) of this section.

(c) *Suits on payment bonds; right to institute.* Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors, whether in an expressed or implied contract, for the work provided in the contract, for which a payment bond is furnished under this Section, and who has not been paid in full within 90 days from the date on which that person last performed the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted upon giving written notice to the contractor within 90 days from the date on which that person last performed the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

(d) *Suits on payment bonds; where and when brought.* Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction within theDistrict's boundaries.

38. Copies of bond forms.

Any person may request and obtain from the District a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

39. Architect-engineer and land surveying services.

(a) *Source selection.* The Purchasing Agent shall publicly issue either a multi-step RFP as in section 10(a) or an RFQ as in section 10(b) of Article III for the procurement of architect-engineer and land surveying services.

(b) *Selection process.* An evaluation committee will be appointed by the Executive Directoror his designee for general District departments, requiring architect-engineer or land survey services. The committee shall select, ranked in the order of their qualifications, those firms submitting SOQs deemed to be the most highly qualified to perform the required services, after considering the following criteria:

(1) Specialized design and technical competence of the business regarding the type of services required;

(2) Capacity and capability of the person, including any consultants, their representatives, qualifications, and locations, to perform the work, including any specialized services, within the time limitations;

(3) Past record of performance on contract with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;

(4) Proximity to or familiarity with the area in which the project is located; and

(5) Price may be considered in connection with construction management contracts.

(c) *Negotiation.* The Purchasing Agent or designee shall negotiate a contract with the firm considered to be the most qualified for architect-engineer or land surveying services at compensation which the Purchasing Agent or designee determines in writing to be fair and reasonable to the District . In making this decision, the Purchasing Agent or designee shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered. Should the Purchasing Agent or designee be unable to negotiate a contract at a fair and reasonable price with the selected firm, the selection committee shall select additional firms in order of their competence and qualifications, and the Purchasing Agent or designee shall continue negotiations with the additional firms in the order of their competence and qualifications in accordance with this section until an agreement is reached.

40. Construction projects.

(a) Except as provided in section 40, a person selected to perform architect-engineer or land surveying services shall not be eligible for consideration for construction projects that result from the person's design or engineering services obtained separately from construction services.

(b) The successful person is not precluded from providing project management or construction management services for the design or engineering services which it has provided.

41. Design-build projects.

(a) A design-build project delivery system may be authorized when the Purchasing Agent makes a determination in writing that it is appropriate and in the best interest of the District to use the system on a specific project. The project may be construed to mean the initial desired outcome including any specific site for construction or alternate site that may be identified after a contract has been awarded. The determination shall be issued only after the Purchasing Agent has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design-build process:

(1) The extent to which the project requirements and possible options have been, or can be, adequately defined;

(2) Time constraints for delivery of the project;

(3) The capability and experience of potential teams with the design-build process;

(4) The suitability of the project for use of the design-build process as concerns special expertise, time, schedule, costs and/or quality; and

(5) The capability of the District to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design-build process.

(b) When a determination has been made by the Purchasing Agent that it is appropriate to use a design-build project delivery system, the design-build team shall include, as needed, a state licensed engineer or architect, and a contractor properly licensed in New Mexico for the type of work required.

(c) For each proposed design-build project, a two-phase procedure for awarding design-build contracts shall be adopted and shall include at a minimum the following:

(1) During phase one, an RFQ shall be prepared for an engineer or architect teamed with a New Mexico licensed contractor in accordance with section 38 and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, and a description of the phase two requirements and subsequent management needed to bring the project to completion. The qualifications of responding persons shall be evaluated and a maximum of five firms shall be short listed in accordance with technical and qualifications-based criteria; and

(2) During phase two, the short-listed persons shall be invited to submit proposals which include a "rough order of magnitude estimate", concepts or solutions, and scheduling. Unsuccessful short-listed persons may be paid a stipend as described in a particular RFP. After evaluations of these submissions, selection may be made and a contract awarded to the highest ranked team for the design and construction of the project upon the site identified in the solicitation or such other site as may be identified by District after award of the contract.

(3) The requesting department will establish design-build specifications and requirements for
each project that will strive for the delivery of a quality project on time and within budget.

ARTICLE VI. SUSPENSION OR DEBARMENT

42. Authority to suspend or debar.

(a) *Suspension.* After consultation with the District's Legal Counsel, the Purchasing Agent is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months.

(b) *Debarment.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Agent, after consulting with the District's Legal Counsel, and notice to the Executive Director, is authorized to debar for cause a person from consideration for award of contracts. The debarment shall be for a period of not more than three years. The causes for debarment include the following:

(1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or the performance or such contract or subcontract;

(2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a District contractor;

(3) Conviction under state or federal antitrust statutes arising out of submission of bids or proposals;

(4) Violation of contract provisions within the past three years, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify debarment action:

a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

b. A recent record of preventable failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts.

(5) Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Districtcontractor, including debarment by another governmental entity for any cause listed in this Article; and

(6) For violation of the ethical standards set forth in Article IX of this Chapter.

(7) Failure to disclose any of (1) through (6) above in a solicitation as may be requested.

43. Decision to suspend or debar.

The Purchasing Agent shall issue a written decision to suspend or debar. The decision shall state the reasons for the action taken and inform the suspended or debarred person involved of his/her rights concerning judicial or administrative review.

44. Notice of decision.

A copy of the decision required by Section 42 shall be mailed, postage pre-paid certified mail return receipt requested or otherwise furnished immediately to the suspended or debarred person.

45. Finality of decision.

A decision under Section 42 shall be final and conclusive unless the suspended or debarred person within 15 calendar days after receipt of decision takes an appeal to the District Board.

46. Appeal.

Any appeal to the District Board of an adverse decision shall be made by filing a notice of appeal with the Executive Director's office within 15 calendar days after the decision has been delivered to the aggrieved person. The proceeding before the District Board shall be de novo. The decision by the District Board under this subsection shall be final.The District Board's decision may be appealed pursuant to Section 39-3.1.1 and NMRA 1-074 to a court of competent jurisdiction within the District's boundaries.

ARTICLE VII. PROTESTS, APPEALS AND REMEDIES

47. Authority to resolve protested solicitations and awards.
The Purchasing Agent is responsible to address, process, and exercise the following:

(a) *Protests of bid or RFP specifications or scope of work.* Any vendor who is aggrieved in connection with the specifications or scope of work in a solicitation may protest to the Purchasing Agent. The protest shall be submitted in writing no later than 7 calendar days prior to the deadline for receipt of the bid or proposal. No protest bond will apply to such protest. The Purchasing Agent shall issue a determination in writing within 2 work days of receipt of such protest, and either proceed with the solicitation, modify it, or cancel it

(b) *Right to protest; protest bond.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Purchasing Agent. The protest shall contain all the grounds for such protest, and must be submitted in writing within 15 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto, along with a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the District. The amount of the bond shall not exceed the estimated cost to the District of processing and defending a protest. Only one protest per person per solicitation is permitted.

(c) *Authority to resolve protests.* The Purchasing Agent shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract.

(d) De*cision.* If the protest is not resolved by mutual agreement, the Purchasing Agent shall promptly issue a decision in writing stating the reason for the action taken and informing the protestant of its right to appeal the decision to the District Board. A copy of the decision of the Purchasing Agent shall be mailed, return receipt requested, or hand-delivered to the protestant or to the address provided in the protest.

(e) *Appeal.* Any appeal to the District Board of an adverse decision shall be made by filing with the Executive Director's office within 15 calendar days after the decision has been delivered to the aggrieved person. The proceeding before the Council shall be de novo. The Board shall decide whether the solicitation or award was in accordance with this Policy, procedures, and the terms and conditions of the solicitation.

(f) *Decisions final.* A decision of the District Board under this Section shall be final and conclusive. The aggrieved person may seek judicial review in the state First Judicial District Court within 30 days of the receipt of notice of the decision of the District Board.

(g) S*tay of procurements during protests.* In the event of a timely protest under subsection (a) of this section, the Purchasing Agent shall not proceed further with the solicitation or with the award of the contract unless the Purchasing Agent, after consultation with the Executive Director, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the District.

(h) *Entitlement to costs.*

(1) When a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but was not, then the protesting bidder or offeror shall be entitled, in addition to any other relief, to the reasonable costs incurred in connection with the protest or appeal costs other than attorney's fees.

(2) Should the protest be denied, the District shall be entitled to recover reasonable costs for processing and adjudicating the protest, and for costs associated with an unreasonable delay of the contract. Recovery of these costs shall not be limited to the proceeds from the protest bond. Excess bond proceeds shall be returned to the person.

48. Contract Claims.

Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission. Within15 calendar days of the time the contractor knows or should have known of the facts and circumstances giving rise to a claim the following procedure shall apply:

(a) *Notice of claim to the Purchasing Agent.* All claims by a contractor against the District relating to a contract except bid protests shall be submitted in writing to the Purchasing Agent for decision. The contractor may request a conference with the Purchasing Agent on the claim.

(b) *Notice to the contractor of the Purchasing Agent's decision.* The decision of the Purchasing Agent shall be issued in writing within 15 calendar days of claim notice and immediately mailed, or otherwise furnished, to the contractor. The decision shall state reasons for the decision reached, and shall inform the contractor of its appeal rights under subsection (d) of this section.

(c) *Failure to render timely decision.* If the Purchasing Agent does not issue a written decision regarding any contract controversy within 15 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

(d) *Appeal.* Any appeal to the District Board of an adverse decision shall be made by filing with the Executive Directors office within 15 calendar days after the decision has been received by the aggrieved person. The proceeding before the District Board shall be de novo.

(e) *Decisions by Board final; exception.* A decision of the District Board under this section shall be final and conclusive unless a protestant seeks judicial review in the state First Judicial District Court within 30 days of the receipt of notice of the decision of the District Board.

49. Remedies for solicitations or awards in violation of law.

(a) *Prior to bid opening or closing date for receipt of proposals.* If, prior to the bid opening or the closing date for receipt of proposals, the Purchasing Agent, after consultation with the District Attorney, determines that a solicitation is in violation of applicable law or regulation then the solicitation shall be canceled by the Purchasing Agent or revised to comply with applicable law.

(b) *Prior to award.* If, after bid opening or the closing date for receipt of proposals, the Purchasing Agent, after consultation with the District Legal Counsel, determines that a solicitation or a proposed award of a contract is in violation of applicable law then the solicitation or proposed award shall be canceled by the Purchasing Agent.

(c) *After award.* If, after an award, the Purchasing Agent, after consultation with the District Legal Counsel, determines that a solicitation or award of a contract was in violation of applicable law, then:

If neither the purchaser nor the person awarded the contract has acted fraudulently or in bad faith:

a. The contract or invoice may be ratified and affirmed or approved for payment by the Board for any amount or the Executive Director, as applicable, for amounts under $100,000.00, provided that it is determined that doing so is in the best interests of the District ; or

b. The contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

If either the purchaser or the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void by the Purchasing Agent, if such action is in the best interests of the District.

50. Procurement violations.

Unauthorized Purchases. Any Purchase which is not legally and appropriately approved within the budget or by other NCRTD action, or which does not substantially comply with the provisions of this policy shall be considered an unauthorized purchase, and thereby not subject to payment by the District. The District hereby declares and establishes that it will assume no responsibility for payment of unauthorized purchases. Furthermore, any individual initiating or otherwise executing any unauthorized purchase is solely responsible for payment and may be subject to disciplinary action up to and including dismissal. All authorized purchases shall be legally budgeted or approved within an appropriate fund or agency account, or within an appropriate line item as approved by the Executive Director. All questionable purchases shall be submitted to the Executive Director for review and a determination shall be made by the Executive Director regarding the purchase being an authorized or unauthorized purchase under the provisions of this policy.

ARTICLE VIII. ETHICS IN PUBLIC CONTRACTING

51. Employee conflict of interest.

(a) Unless waived under Section 54, it shall be unethical and unlawful for any District employee to participate directly or indirectly in any procurement when the District employeeknows that:

(1) The District employee or any member of the District employee's immediate family has a financial interest pertaining to the procurement; or

(2) Any other person with whom the District employee or any member of a District employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

(b) A District employee or any member of a District employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial trust.

52. Gratuities and kickbacks.

(a) It shall be unlawful for any person to offer, give or agree to give any District employee or former District employee, or for any District employee or former District employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with:

(1) any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase requisition;

(2) influencing or developing the content or any specifications or procurement standard, except as a result of a published Request for Information;

(3) assisting in rendering of advice, investigation, auditing or in any other advisory capacity in proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal thereof; or

(4) accepting any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

(b) *Contract and solicitation clause.* The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation.

53. Prohibition against contingent fees.

It shall be unethical and unlawful for a person to be retained, or to retain a person, to solicit or secure a District contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

54. Contemporaneous employment.

It shall be unethical and unlawful for any District employee who is participating directly or indirectly in the procurement process to become or to be, while a District employee, the employee of any person contracting with the governmental body by which the employee is employed.

55. Waivers from contemporaneous employment prohibition and other conflicts of interest.

The District Board may grant a waiver from the employee conflict of interest provision (Section 50) or the contemporaneous employment provision (Section 53) upon making a written determination that:

(1) The contemporaneous employment or financial interest of the District employee has been publicly disclosed prior to solicitation;

(2) The District employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and

(3) The award will be in the best interests of the District.

56. Use of confidential information.

It shall be unethical and unlawful for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

57. Sanctions.

In addition to any civil or criminal penalties or fines imposed by federal or state law, the following shall apply:

(a) *Employees.* The Executive Director may impose any one or more of the following sanctions on a District employee for violation of the ethical standards set forth in this division:

(1) Oral or written warning or reprimands;

(2) with or without pay for specified periods of time; or

(3) Termination of employment.

(b) *Other Persons.* The Purchasing Agent may impose any one or more of the following sanctions on a person for violations of the ethical standards:

(1) Written warnings or reprimands;

(2) Termination of contracts; or

(3) Suspension or debarment as provided in Section 41.

58. Recovery of value transferred or received in violation of the Code.

(a) *Generally.* The District may use any and all legal and equitable remedies to recover the value of anything transferred or received in breach of the ethical standards of this Policy by a District employee or other person.

(b) *Recovery of kickbacks by the District.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount was included in the price of the subcontract or order and ultimately borne by the District and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

59. Severability.

If any provision or application of these regulations is held invalid, such invalidity shall not affect any other provision or application of these regulations which be given effect without theinvalidprovision or application.

60. Effective Date.

This Resolution shall be effective upon adoption.

ADOPTED this ____ day of_____ , 2012.

North Central Regional Transit District

_____

Daniel Barrone, Chairman

Approved as to form:

_____

Peter Dwyer, Counsel

NCRTD Board Adopted Resoution 2007-13,
August 14, 2007

North Central Regional Transit District (NCRTD)

Procurement Policies

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SECTION I: GENERAL PROVISIONS

1.1 User Applicability. These procedures and provisions apply to all departments and personnel authorized to make purchases from public funds budgeted, controlled by or otherwise under the supervision of the North Central Regional Transit District (hereinafter the NCRTD). .

1.2 Administration. The responsibility for administration of the provisions of this policy shall be under the Executive Director. The Executive Director shall have the responsibility and authority to insure that all provisions of law and this policy are followed and shall be authorized to issue any supplemental regulations consistent with this policy deemed necessary to administer, manage or clarify this policy. Supplements shall be approved by the NCRTD, and Certified copies of all supplements shall be attached to and made a part of this policy. The Executive Director shall be responsible for having the knowledge to insure that all provisions of this policy and all other purchasing concerns and activities of the NCRTD are appropriate and consistent with the most current, generally accepted purchasing techniques, and all provisions of the law. Upon the absence of the Executive Director, the Executive Director's designee will be responsible for approval and enhancement of provisions as set forth in this policy.

1.3 Purchasing Agent. The Purchasing Agent for the NCRTD shall be the Executive Director

1.4 User Authority and Responsibility. Only individuals authorized by the Executive Director or designee of NCRTD shall be permitted to make purchases.

1.5 Definition of a Purchase. For the purpose of this policy a purchase includes the execution of any expense to be paid out of supervised funds.

1.6. Unauthorized Purchases. Any Purchase which is not legally and appropriately approved within the budget or by other NCRTD action, or which does not substantially comply with the provisions of the State Statutes, particularly the State Procurement Code, and the provisions of this policy shall be considered an unauthorized purchase, and thereby not subject to payment by the NCRTD. The NCRTD hereby declares and establishes that it will assume no responsibility for payment of unauthorized purchases. Furthermore, any individual initiating or otherwise executing any unauthorized purchase is solely responsible for payment and may be subject to disciplinary action up to and including dismissal. All authorized purchases shall be legally budgeted or approved within an appropriate fund or agency account, or within an appropriate line item as approved by the NCRTD. All questionable purchases shall be submitted to the Executive Director for review and a determination shall be made by the Executive Director regarding the purchase being an authorized or unauthorized purchase under the provisions of this policy.

1.7 Civil Penalties. Persons knowingly violating the State Procurement Code may be subjected to a civil penalty of up to $1,000 for each violation in accordance with the New

Mexico State Statutes. In addition, persons knowingly violating the State Procurement Code may be subject to disciplinary action up to and including termination of employment by the NCRTD.

1.8 Approval of Unauthorized Purchases. All purchases determined to be an unauthorized purchase shall be considered by the Executive Director, which at his or her discretion may approve or not approve an unauthorized purchase for payment. Unauthorized purchases shall not be approved or processed for payment prior to Executive Director approval.

1.9 Consistency with State Procurement Code. The provisions of this policy are subject to change as per State Procurement Code revisions. Any State Procurement Code revision that is inconsistent with the provisions of this policy shall rule. All authorized purchasers shall be given a copy of such revisions and notified that they are in effect.

1.10 Amendment. Amendment of this policy shall be executed by resolution approved by the NCRTD Board of Directors.

1.11 Interpretation of Policy Supplements. In any case that a provision of the purchase policy is vague or unclear, the Executive Director may provide a written supplement for clarification of the provision which shall be implemented consistently by all departments and offices, a copy of which should be attached to this policy.

SECTION II: STANDARD PURCHASING PROCEDURES

2.1 Standard Purchasing Procedure Applicability. The provisions of this section apply to all standard or non-emergency purchases and are hereafter referred to as "standard purchasing procedures" in this policy. "Standard Purchases" are described as systematic, planned and necessary purchases for administration and operation of a project or department. There shall be no exception to these standard procedures except as provided in "Non-Standard, Urgent and Emergency Purchases Procedures" in Section III of this policy.

2.2 Initiating a Purchase: Purchase Requisition. All standard purchases as authorized by this section require that a written Requisition be completed and be submitted to the Executive Director prior to making a purchase. The person making the requisition shall be responsible for obtaining competitive pricing and making the actual purchase. Purchasers shall not make actual purchase unless directed or authorized to do so by the Executive Director. Purchase Requisitions shall be signed by an authorized purchaser and shall contain all information as required by the Executive Director to include but not be limited to:

A. Date - Date the requisition is prepared.

B. Fund – The grant or program out of which the expenditure is to be paid. By specifying a Fund the purchaser certifies that the purchase is allowable under that

grant and that there is sufficient budget in the line item to cover the cost of the proposed purchase.

C. Department Head or Authorized Agent - Signature.

D. Required Date of Delivery - Estimated date of delivery may be procured from vendor.

E. Suggested Suppliers - Department or division initiating the requisition shall list any known suppliers, including phone numbers and addresses of such suppliers.

F. Quantity - specify a unit and the approximate amount per unit being requested. Units may be "each", "box", "gallons", "reams", "pounds", etc.

G. Description - The description of the items or services must be sufficiently complete to identify the item being purchased and to allow processing of the requisition without requesting additional information. Common use items may be identified by brand name.

H. Cost, or estimated cost if exact cost cannot be determined.

I. Account - The appropriate budgeted line item account number must be shown on each requisition in order for the costs of the items purchased to be appropriately charged. It is the purchaser's (as described in 1.4 of this policy) responsibility to assign the line item account number to the requisition. Requisitions may include multiple line items PROVIDED they are within the same fund. Requisitions which do not include the above information will be refused by the Executive Director or ED's representative. After a complete requisition is accepted by the Executive Director, a purchase order will be processed.

2.3 Purchase Orders. A purchase order shall be obtained by a purchaser prior to executing a purchase or receiving the purchased items. Purchases executed prior to obtaining a purchase order are prohibited, except as otherwise provided in "Non-Standard and Emergency Purchasing Procedures", Section III of this policy. The purchaser shall inform the vendor that the purchase order number must be included on the invoice submitted for payment.

2.4 Invoices. An invoice is an itemized statement submitted by the vendor for payment for goods or services delivered. It is the responsibility of the vendor to insure that a purchase order number is provided prior to issuing goods or services and the vendor shall include the purchase order number on the invoice submitted for payment. Exceptions to this policy must meet all criteria as outlined in 3.2B of this policy. In cases where purchase order numbers are not included on the invoice when required, the vendor shall be informed. The vendor will be notified that if improper invoicing procedures continue to occur, the Executive Director may exclude the vendor from the vendor list. Also, the NCRTD may refuse payment in any case where there is an unauthorized purchase.

A. Processing for Payment. It shall be the responsibility of the Executive Director to insure that all invoices received are appropriately authorized prior to payment and that the purchase order numbers are on the invoices when required. The Executive Director shall be responsible for insuring that appropriate procedures are

established and used for payment after invoices are received to include that payment is made timely, and to insure that discounts are received and late charges avoided.

B. Verification of Invoices. All invoices shall be signed by the person receiving the goods or services prior to payment to insure materials and services have been received and to verify it is authorized for payment. A signed Payment Requisition may substitute for a signature on an invoice.

2.5 Over Expenditures. Requisitions shall not be initiated and purchase orders shall not be issued, approved or processed in cases that line items will be over expended, except as approved by the Executive Director in accordance with State and NCRTD regulations and provisions and provided there are legally sufficient budget balances available. It shall be the primary responsibility of the purchaser to insure sufficient funds are available prior to initiating a purchase. The Executive Director or ED's designee shall make available sufficient information upon request to keep purchasers properly updated on budget balances, and shall notify any purchaser if, after analysis of the monthly budget report, there are any indications of an existing or impending budget balance problem. It is primarily the purchasers' responsibility to make sure they have sufficient information to make purchasing decisions.

2.6 Competitive Purchases. The Executive Director shall attempt to insure that all purchases are made at the best possible prices, and purchases shall be made in accordance with the following provisions:

A. $250 or Less. Purchases shall be made according to the best obtainable price. (Note: Purchases may be from petty cash in accordance with petty case purchases as established by written procedures of the Executive Director in accordance with Section 3.5 of this policy.)

B. $251 to $2499. Purchases shall be made according to the best obtainable price provided at least three (3) bona fide verbal quotes from different vendors have been obtained for such purchases. These quotes are required to be recorded on a price quote form except as provided in Sections 2.6.F & G below.

C. $2499 to $10,000. Purchases shall be made according to the best obtainable price provided at least three (3) bona fide written quotes are obtained. The Executive Director may, at his or her discretion, waive this request for written quotes and require three (3) bona fide verbal quotes.

D. $10,000 and above. (Except as stated in Sections 2.6.F and G of this policy). All purchases exceeding $10,000 require formal bid procedures as specified by State regulations and shall be processed and executed by the Executive Director through formal procedures, such as, for example, issuing an RFP. The Executive Director shall draw up all bid specifications.

E. Telephone and Written Quote Exceptions. In the event there are not three (3) known local vendors which have materials/services available, less than three (3)

quotes are permissible provided the purchaser, Executive Director or ED's designee verifies that every reasonable attempt has been made to obtain three (3) quotes, and the quotes obtained will be included with the requisition. When there is only one vendor available, Sole Source Documentation as described in Section 2.7 of this policy must be included with the requisition. When the vendor has a State or Federal Purchasing Contract, or if a vendor has an agreement or contract with the NCRTD to provide goods or services, multiple quotes are not required.

F. State or Federal Purchasing Contracts and Cooperative Bid Exceptions. Direct purchases may be made in cases that a vendor has a State or Federal Purchasing Contract recorded in the Purchasing Office. Also, the NCRTD may purchase items cooperatively through another public body's bid process consistent with State regulations.

G. Bid Specifications. Specifications should be written primarily to address the needs of the NCRTD for a specific item to perform a specific function. Specifications written for purchases shall not be "closed or exclusive", or otherwise written in such a way as to intentionally favor or exclude a vendor. Reference to specific types or quality shall be followed by "or equal" and all specifications regardless of wording shall be considered as "or equal". It shall be the purchaser's responsibility to insure that all specialized technical aspects of specifications are correct and appropriate, and to point out any questionable, unusual or inappropriate specifications to the Executive Director prior to processing. The bidding process may be waived after approval of the Executive Director in cases that a vendor has a State or Federal Purchasing Contract.

2.7 Sole Source Purchase. A sole source purchase is permissible when there is only one vendor in the overall geographical region that can provide an item or service. The Executive Director shall certify that a good faith effort has been made to contact other vendors in the overall geographical region where the sole source purchase will be made, and that the chosen vendor of the item or service is the only source found to be available in the region. The Executive Director shall certify that every effort has been made to determine if there is a Federal Purchasing or State Contract for the item or services requested and that negotiations, as appropriate, have been conducted with the sole source vendor to determine that the price quoted is the best obtainable price. The NCRTD office shall maintain for a minimum of three years, records of all sole source procurements. The record of such procurement shall be public record and shall contain:

A. The contractor's name and address;

B. The amount and item of the contract;

C. A listing of the services, construction or items of tangible property procured under the contract; and

D. The justification for the procurement method.

2.8 Fixed Asset Purchase. All capital outlay purchases are considered fixed assets and shall be noted as such on the purchase requisition. It shall be the responsibility of the

Purchasing Office to screen all purchases and identify and process fixed assets in accordance with the current State law and provisions regarding fixed assets.

2.9 Procurement of Professional Services. All professional services having a value not exceeding twenty five thousand dollars ($25,000) will be procured at the best negotiated value.

2.10 Personal Use Prohibited. There shall be no purchases made for the purpose of personal or private use.

SECTION III. NON-STANDARD, URGENT AND EMERGENCY PURCHASING PROCEDURES.

3.1 Non-Standard, Urgent and Emergency Procedures: General Provisions. The provisions of this section apply to all purchases other than purchases subject to the standard purchasing procedures as specified in Section II of this policy. Generally, this section includes all purchases which are justifiably urgent or are emergencies, and cannot, therefore reasonably follow the standard purchasing procedures due to insufficient time required for standard processing, and other non-standard procedures which are not applicable to the standard purchasing procedures of this policy. It is the responsibility of the purchaser to insure that all purchases made under provisions of this section are the result of immediate and unforeseen circumstances. Questionable purchases shall be reported to and reviewed by the Executive Director.

3.2 Emergency or Urgent Purchases. Emergency or urgent purchases are deemed to be authorized purchases only in cases which are justifiably necessary and cannot be delayed until the standard purchasing procedures can be utilized. Purchases which could have been reasonably pre-planned or anticipated shall not be considered as emergency or urgent purchasers. Emergency or urgent purchases are permissible provided they are in accordance with the following provisions:

A. Urgent Purchases. An urgent purchase is a purchase made after normal working hours of the office making the purchase, which justifiably requires immediate purchase, and which cannot be telephoned in to the Executive Director to obtain a purchase order number prior to the purchase being made. A written requisition shall be submitted by three (3) normal working days after purchaser returns from a trip in which a non-local purchase was made. In cases that an invoice is received by the agency office prior to a requisition being submitted, processing shall not proceed until a written requisition is submitted indicating it was an "Urgent Purchase."

B. Emergency Purchase. An emergency purchase is permissible when there is an existing condition which creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of the emergency condition creates an immediate and serious need for procurement of goods or services that cannot be met through

normal procurement methods and the lack of which would seriously threaten the functioning of government; the preservation or protecting of property; or the health or safety of any person. The existence of an emergency condition must first be determined by the Executive Director. The NCRTD office shall maintain for a minimum of three years records of all emergency procurements. The record of such procurement shall be public record and shall contain:

1. The contractor's name and address
2. The amount and term of the contract, and
3. A listing of the goods and services procured under the contract.

A written description of the basis for determining that there was an emergency and for the selection of the particular vendor or contractor shall be included in the procurement file.

C. Urgent or Emergency Requisitions. All urgent or emergency requisitions shall have the words "Urgent" or "Emergency" written on the top as is applicable, and shall be accompanied by a receipt or invoice for the purchase.

D. Justification. In all cases that urgent purchases are telephoned to the NCRTD office, the office shall verify authorization and request verbal justification for the purchase prior to assigning a purchase order number. All emergency and urgent purchases shall be justifiable and the purchaser shall be responsible for attaching a written justification to the requisitions.

3.3 Remote or Off-Site Purchases. Those purchasers who are located within a remote or off-site area which physically hinders submitting requisitions prior to the purchase shall use procedures established by the Executive Director as a supplemental regulation to this policy.

3.4 Open Purchase Order. For the purpose of this policy, open purchase orders are purchase orders which are utilized for numerous and repeated daily purchases which are anticipated over an extended period of time, but in no event may overlap fiscal years. The Executive Director may establish a cap on open purchase orders as a supplemental regulation to this policy.

3.5 Petty Cash Procedures. Petty cash funds are cash funds which are made readily available to offices or department heads for the purpose of making small cash purchases. A petty cash fund shall not exceed $50.00. Increases in petty cash funds must have approval from the Executive Director. The Executive Director shall be responsible for establishing written safeguards, provisions and procedures to insure appropriate accounting and maximum accountability for all petty cash funds. The Executive Director may at any time change the procedures for petty cash funds, or eliminate a petty cash fund if deemed appropriate, and shall eliminate a petty cash fund in cases that procedure are not being reasonably followed, or in cases that unnecessary or repetitious shortages/overages in funds occur. Petty cash funds are subject to audit by the Executive Director or ED's designee at any time without notice. Custodians shall be assigned to each individual petty cash fund and be held responsible and accountable to the Executive

Director for the appropriate management of the petty cash funds. All custodians shall be required to sign for a copy of the Petty Cash Procedures and shall be knowledgeable thereof. Copies of updated Petty Cash procedures shall be attached to and made a supplement of this policy.

3.6 Used Equipment and Item Purchases. Funds for used equipment and items shall be specifically appropriated by the Executive Director for such purchases. Such purchases shall be in accordance with Section 2.6 of this Policy to include the following provisions:

> The Executive Director is authorized to approve purchases of used equipment not to exceed the amount of funds appropriated for such purchases. Used equipment or items with a price or estimated value of $5,000 or more shall require bids as though the items were new, adding specifications that permit used items under conditions to be outlined in the bid specifications including but not limited to requiring a written warranty for at least ninety days after the date of delivery, and an independent "certificate of working order" by a qualified mechanic or appraiser.

3.7 Special Funds. Funds for specialized activities, such as special boards, undercover operations, etc., shall be specifically appropriated by the NCRTD. The Executive Director shall be responsible for preparing written supplemental regulations establishing safeguards, provisions and procedures to insure appropriate accounting and maximum accountability for such funds. The person carrying out the specialized activity shall be the custodian strictly responsible for the appropriate use of these funds and shall sign for a copy of such written procedures Copies of updated procedures shall be attached to and made a supplement of this policy.

3.8 Routine Monthly purchases and Other Non-Standard Purchases. Routine monthly purchases such as utility bills or other service charges and other non-standard purchases such as professional services, lease purchases, formal bids, purchases of real property, funds appropriated for support to other agencies, emergency purchases, or other purchases requiring special purchases shall be processed in accordance with State Statutes and written procedures established by the Executive Director. Copies of updated procedures shall be attached to and made a supplement to this policy.

3.9 Approval and Revision of Supplements. All supplemental regulations or revisions of this policy except as specified above as the responsibility of the Executive Director, shall be approved by the NCRTD Board of Directors and attached to and made a part of this policy.